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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 407

[Docket ID FCIC–21–0005]

RIN 0563–AC74

Area Risk Protection Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, U.S. Department of Agriculture (USDA).

ACTION: Correcting amendment.

SUMMARY: On June 30, 2021, the Federal Crop Insurance Corporation revised the Area Risk Protection Insurance (ARPI) Regulations and Common Crop Insurance Policy (CCIP) Basic Provisions. That final rule inadvertently failed to revise the applicable crop year in the introductory text of the ARPI policy. This document makes the correction.

DATES: Effective August 5, 2021.

FOR FURTHER INFORMATION CONTACT: Francie Tolle; telephone (816) 926–7730; email *francie.tolle@usda.gov.* Persons with disabilities who require alternative means of communication should contact the USDA Target Center at (202) 720–2600 or 844–433–2774.

SUPPLEMENTARY INFORMATION:

Background

The Area Risk Protection Insurance (ARPI) Regulations in 7 CFR 407 were revised by a final rule published in the **Federal Register** on June 30, 2021 (86 FR 34606–34611). That final rule inadvertently failed to revise the applicable crop year in the introductory text of the ARPI policy. 2022 is the effective crop year. This document makes that correction.

List of Subjects in 7 CFR Part 407

Acreage allotments, Administrative practice and procedure, Barley, Corn, Cotton, Crop insurance, Peanuts, Reporting and recordkeeping requirements, Sorghum, Soybeans, Wheat.

Accordingly, 7 CFR part 407 is corrected by making the following correcting amendment:

PART 407—AREA RISK PROTECTION INSURANCE REGULATIONS

■ 1. The authority citation for part 407 continues to read as follows:

Authority: 7 U.S.C. 1506(l) and 1506(o).

§ 407.9 [Corrected]

■ 2. In § 407.9, in the introductory text, remove the year ''2021'' and add ''2022'' in its place.

Richard Flournoy,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 2021–16539 Filed 8–4–21; 8:45 am]

BILLING CODE 3410–08–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2021–0052]

RIN 3150–AK63

List of Approved Spent Fuel Storage Casks: NAC International NAC–UMS® Universal Storage System, Certificate of Compliance No. 1015, Amendment No. 8

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage regulations by revising the NAC International NAC–UMS® Universal Storage System listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 8 to Certificate of Compliance No. 1015. Amendment No. 8 revises the certificate of compliance to: Add the storage of damaged boiling-water reactor spent fuel, including higher enrichment and higher burnup spent fuel; change the allowable fuel burnup range; expand the boiling-water reactor class 5 fuel inventory that could be stored in the cask; and revise definitions in the technical specifications.

DATES: This direct final rule is effective October 19, 2021, unless significant adverse comments are received by September 7, 2021. If this direct final rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register**. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Comments received on this direct final rule will also be considered to be comments on a companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**.

ADDRESSES: Submit your comments, identified by Docket ID NRC–2021–0052, at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

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: Bernard White, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–6577; email: *Bernard.White@nrc.gov* or James Firth, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–6628, email: *James.Firth@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2021–0052 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–2021–0052. Address questions about NRC dockets to Dawn Forder, telephone: 301–415–3407, email: *Dawn.Forder@nrc.gov.* For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

B. Submitting Comments

Please include Docket ID NRC–2021–0052 in your comment submission. The NRC requests that you submit comments through the Federal rulemaking website at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

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. Rulemaking Procedure

This rule is limited to the changes contained in Amendment No. 8 to Certificate of Compliance No. 1015 and does not include other aspects of the NAC International NAC–UMS® Universal Storage System cask system design. The NRC is using the ''direct final rule procedure'' to issue this amendment because it represents a limited and routine change to an existing certificate of compliance that is expected to be non-controversial. The NRC has determined that, with the requested changes, adequate protection of public health and safety will continue to be reasonably assured. The amendment to the rule will become effective on October 19, 2021. However, if the NRC receives any significant adverse comment on this direct final rule by September 7, 2021, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule, certificate of compliance, or technical specifications.

III. Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended, requires that ''[t]he Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the Nuclear Waste Policy Act states, in part, that ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule that added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The casks approved for use under the terms, conditions, and specifications of their certificate of compliance or an amended certificate of compliance pursuant to this general license are listed in § 72.214. The NRC subsequently issued a final rule on October 19, 2000 (65 FR 62581), that approved the NAC International NAC–UMS® Universal Storage System cask system design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance No. 1015.

IV. Discussion of Changes

On December 18, 2018, as supplemented on April 24, 2020, and

August 7, 2020, NAC International submitted an application to amend the NAC International NAC–UMS® Universal Storage System and the associated technical specifications for its use. The NAC International NAC–UMS® Universal Storage System consists of the following components: A transportable storage canister (TSC), which contains the spent fuel; a vertical concrete cask, which contains the TSC during storage; and a transfer cask, which contains the TSC during loading, unloading, and transfer operations. Amendment 8 would allow the storage of up to four damaged spent nuclear fuel assemblies from boiling-water reactors per cask and would allow a basket to hold the damaged boiling-water reactor spent nuclear fuel. Amendment No. 8 revises the certificate of compliance to (1) add the storage of damaged boiling-water reactor spent fuel, including higher enrichment and higher burnup spent fuel; (2) change the allowable fuel burnup range; (3) expand the boiling-water reactor class 5 fuel inventory that could be stored in the cask; and (4) change definitions in the technical specifications that are associated with the contents of the spent nuclear fuel stored in the cask (*e.g.,* high burnup fuel and initial peak planar-average enrichment).

As documented in the preliminary safety evaluation report, the NRC performed a safety evaluation of the proposed certificate of compliance amendment request. The NRC determined that this amendment does not reflect a significant change in design or fabrication of the cask. Specifically, the NRC determined that the design of the cask would continue to maintain confinement, shielding, and criticality control in the event of each evaluated accident condition. This amendment does not reflect a significant change in design or fabrication of the cask. In addition, any resulting occupational exposure or offsite dose rates from the implementation of Amendment No. 8 would remain well within the limits specified by 10 CFR part 20, ''Standards for Protection Against Radiation.'' Thus, the NRC found there will be no significant change in the types or amounts of any effluent released, no significant increase in the individual or cumulative radiation exposure, and no significant increase in the potential for or consequences from radiological accidents.

The NRC staff determined that the amended NAC International NAC–UMS® Universal Storage System cask design, when used under the conditions specified in the certificate of compliance, the technical specifications, and the NRC's regulations, will meet the requirements of 10 CFR part 72; therefore, adequate protection of public health and safety will continue to be reasonably assured. When this direct final rule becomes effective, persons who hold a general license under § 72.210 may, consistent with the license conditions under § 72.212, load spent nuclear fuel into the NAC International NAC–UMS® Universal Storage System that meet the criteria of Amendment No. 8 to Certificate of Compliance No. 1015.

V. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC revises the NAC International NAC–UMS® Universal Storage System listed in § 72.214, ''List of approved spent fuel storage casks.'' This action does not constitute the establishment of a standard that contains generally applicable requirements.

VI. Agreement State Compatibility

Under the ''Agreement State Program Policy Statement'' approved by the Commission on October 2, 2017, and published in the **Federal Register** on October 18, 2017 (82 FR 48535), this rule is classified as Compatibility Category NRC—Areas of Exclusive NRC Regulatory Authority. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or the provisions of 10 CFR chapter I. Therefore, compatibility is not required for program elements in this category. Although an Agreement State may not adopt program elements reserved to the NRC, and the Category ''NRC'' does not confer regulatory authority on the State, the State may wish to inform its licensees of certain requirements by means consistent with the State's administrative procedure laws.

VII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31885).

VIII. Environmental Assessment and Finding of No Significant Impact

Under the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' the NRC has determined that this direct final rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The NRC has made a finding of no significant impact on the basis of this environmental assessment.

A. The Action

The action is to amend § 72.214 to revise the NAC International NAC–UMS® Universal Storage System listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 8 to Certificate of Compliance No. 1015.

B. The Need for the Action

This direct final rule amends the certificate of compliance for the NAC International NAC–UMS® Universal Storage System within the list of approved spent fuel storage casks to allow power reactor licensees to store spent fuel at reactor sites in casks with the approved modifications under a general license. Specifically, Amendment No. 8 would allow the storage of up to four damaged spent nuclear fuel assemblies from boiling-water reactors per cask and would allow a basket to hold the damaged boiling-water reactor spent nuclear fuel. Amendment 8 would change the allowable fuel burnup range. Amendment 8 expands the boiling-water reactor class 5 fuel inventory that could be stored in the cask. Amendment 8 would also include changes to definitions in the technical specifications that are associated with the contents of the spent nuclear fuel stored in the cask (*i.e.,* high burnup fuel and initial peak planar-average enrichment).

C. Environmental Impacts of the Action

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent fuel under a general license in cask designs approved by the NRC. The potential environmental impact of using NRC-approved storage casks was analyzed in the environmental assessment for the 1990 final rule. The environmental assessment for this Amendment No. 8 tiers off of the environmental assessment for the July

18, 1990, final rule. Tiering on past environmental assessments is a standard process under the National Environmental Policy Act of 1969, as amended.

The NAC International NAC–UMS® Universal Storage System is designed to mitigate the effects of design basis accidents that could occur during storage. Design basis accidents account for human-induced events and the most severe natural phenomena reported for the site and surrounding area. Postulated accidents analyzed for an independent spent fuel storage installation, the type of facility at which a holder of a power reactor operating license would store spent fuel in casks in accordance with 10 CFR part 72, can include tornado winds and tornado-generated missiles, a design basis earthquake, a design basis flood, an accidental cask drop, lightning effects, fire, explosions, and other incidents.

The design of the cask would provide confinement, shielding, and criticality control in the event of each evaluated accident condition. If confinement, shielding, and criticality control are maintained, the environmental impacts resulting from an accident would be insignificant. This amendment does not reflect a significant change in design or fabrication of the cask. Because there are no significant design or process changes, any resulting occupational exposure or offsite dose rates from the implementation of Amendment No. 8 would remain well within the 10 CFR part 20 limits. Therefore, the proposed changes will not result in any radiological or non-radiological environmental impacts that significantly differ from the environmental impacts evaluated in the environmental assessment supporting the July 18, 1990, final rule. There will be no significant change in the types or significant revisions in the amounts of any effluent released, no significant increase in the individual or cumulative radiation exposures, and no significant increase in the potential for, or consequences from, radiological accidents. The NRC documented its safety findings in the preliminary safety evaluation report.

D. Alternative to the Action

The alternative to this action is to deny approval of Amendment No. 8 and not issue the direct final rule. Consequently, any 10 CFR part 72 general licensee that seeks to load spent nuclear fuel into the NAC–UMS® Universal Storage System in accordance with the changes described in proposed Amendment No. 8 would have to request an exemption from the requirements of §§ 72.212 and 72.214. Under this alternative, interested licensees would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee. The environmental impacts would be the same as the proposed action.

E. Alternative Use of Resources

Approval of Amendment No. 8 to Certificate of Compliance No. 1015 would result in no irreversible commitment of resources.

F. Agencies and Persons Contacted

No agencies or persons outside the NRC were contacted in connection with the preparation of this environmental assessment.

G. Finding of No Significant Impact

The environmental impacts of the action have been reviewed under the requirements in the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in subpart A of 10 CFR part 51. Based on the foregoing environmental assessment, the NRC concludes that this direct final rule, ''List of Approved Spent Fuel Storage Casks: NAC International NAC–UMS® Universal Storage System, Certificate of Compliance No. 1015, Amendment No. 8,'' will not have a significant effect on the human environment. Therefore, the NRC has determined that an environmental impact statement is not necessary for this direct final rule.

IX. Paperwork Reduction Act Statement

This direct final rule does not contain any new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing collections of information were approved by the Office of Management and Budget, approval number 3150–0132.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid Office of Management and Budget control number.

X. Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) (RFA) requires agencies to consider the impact of their rules on small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in sections 603 and 604 of the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that a regulatory flexibility analysis is not required if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The certification must include a statement providing the factual basis for this determination and the reasoning should be clear. The Executive Director for Operations has been delegated the authority to ensure this rule complies with the Regulatory Flexibility Act.

The NRC has established size standards at 10 CFR 2.810. This direct final rule affects only those authorized to possess or operate nuclear power reactors and NAC International. NAC International is owned by Hitz Holdings U.S.A. Inc., a wholly owned subsidiary of Hitachi Zosen Corporation, which is not a small entity. Under 10 CFR 2.810(e), a licensee who is a subsidiary of a large entity does not qualify as a small entity. This direct final rule would allow persons authorized to possess or operate a nuclear power reactor, who hold a general license under § 72.210, consistent with the license conditions under § 72.212, to load spent nuclear fuel into the NAC International NAC–UMS® Universal Storage System that meet the criteria of Amendment No. 8 to Certificate of Compliance No. 1015. The use of this general license to store spent nuclear fuel using Amendment No. 8 to Certificate of Compliance No. 1015 would reduce the need for and burden from requesting additional site-specific approvals and exemptions. Also, based on the NRC size standards at 10 CFR 2.810, none of the existing nuclear power plants storing spent nuclear fuel are small entities. Pursuant to its delegated authority, the Executive Director for Operations certifies under section 605 of the Regulatory Flexibility Act ''that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.''

XI. Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if (1) it notifies the NRC in advance, (2) the spent fuel is stored under the conditions specified in the cask's certificate of compliance, and (3) and the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On October 19, 2000 (65 FR 62581), the NRC issued an amendment to 10 CFR part 72 that approved the NAC International NAC–UMS® Universal Storage System by adding it to the list of NRC-approved cask designs in § 72.214.

On December 18, 2018, as supplemented on April 24, 2020, and August 7, 2020, NAC International submitted an application to amend the NAC International NAC–UMS® Universal Storage System as described in Section IV, ''Discussion of Changes,'' of this document. When this direct final rule becomes effective, persons authorized to possess or operate a nuclear power reactor and who hold a general license under § 72.210 would be allowed to load spent nuclear fuel into the NAC International NAC–UMS® Universal Storage System that meet the criteria of Amendment No. 8 to Certificate of Compliance No. 1015, consistent with the license conditions under § 72.212.

The alternative to this action is to withhold approval of Amendment No. 8 and to require any 10 CFR part 72 general licensee seeking to load spent nuclear fuel into the NAC International NAC–UMS® Universal Storage System under the changes described in Amendment No. 8 to request an exemption from the requirements of §§ 72.212 and 72.214. Under this alternative, each interested 10 CFR part 72 licensee would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

Approval of this direct final rule is consistent with previous NRC actions. Further, as documented in the preliminary safety evaluation report and environmental assessment, this direct final rule will have no adverse effect on public health and safety or the environment. This direct final rule has no significant identifiable impact or benefit on other government agencies. Based on this regulatory analysis, the NRC concludes that the requirements of this direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory; therefore, this action is recommended.

XII. Backfitting and Issue Finality

The NRC has determined that the backfit rule (§ 72.62) does not apply to this direct final rule. Therefore, a backfit analysis is not required. This direct final rule revises Certificate of Compliance No. 1015 for the NAC International NAC–UMS® Universal Storage System, as currently listed in § 72.214. The revision consists of the changes in Amendment No. 8 previously described, as set forth in the revised certificate of compliance and technical specifications.

Amendment No. 8 to Certificate of Compliance No. 1015 for the NAC International NAC–UMS® Universal Storage System was initiated by NAC International and was not submitted in response to new NRC requirements, or an NRC request for amendment. Amendment No. 8 applies only to new casks fabricated and used under Amendment No. 8. These changes do not affect existing users of the NAC International NAC–UMS® Universal Storage System, and the current Amendment No. 7 continues to be effective for existing users. While current users of this storage system may comply with the new requirements in Amendment No. 8, this would be a voluntary decision on the part of current users.

For these reasons, Amendment No. 8 to Certificate of Compliance No. 1015 does not constitute backfitting under § 72.62 or § 50.109(a)(1), or otherwise represent an inconsistency with the issue finality provisions applicable to combined licenses in 10 CFR part 52. Accordingly, the NRC has not prepared a backfit analysis for this rulemaking.

XIII. Congressional Review Act

This direct final rule is not a rule as defined in the Congressional Review Act.

XIV. Availability of Documents

The documents identified in the following table are available to interested persons, as indicated.

Document	ADAMS accession No.
Submission of a Request to Amend the U.S. Nuclear Regulatory Commission Certificate of Compliance No. 1015 for the NAC–UMS Cask System, December 18, 2019.	ML20006D749
Application for Amendment No. 8 to the Model No. NAC–UMS Storage Cask—Acceptance Letter, March 17, 2020	ML20076A546
NAC International, Submittal of Supplement to Amend the NRC Certificate of Compliance No. 1015 for the NAC–UMS Cask System, April 24, 2020.	ML20122A201
Application for Amendment No. 8 to the Model No. NAC–UMS Storage Cask—Request for Additional Information, June 25, 2020.	ML20170A800
Submission of Responses to the U.S. Nuclear Regulatory Commission Request for Additional Information for Certificate of Compliance No. 1015 for the NAC–UMS Cask System, August 7, 2020.	ML20227A066
Memorandum to J. Cai re: User Need for Rulemaking for Amendment No. 8 Request, February 23, 2021	ML20358A255
Proposed Certificate of Compliance No. 1015 Amendment No. 8, Technical Specifications, Appendix A	ML20358A257
Proposed Certificate of Compliance No. 1015, Amendment No. 8, Technical Specifications Appendix B	ML20358A258
Draft Certificate of Compliance No. 1015 Amendment No. 8	ML20358A256
Certificate of Compliance No. 1015 Amendment No. 8, Preliminary Safety Evaluation Report	ML20358A259

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2021–0052.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Hazardous waste, Indians, Intergovernmental relations, Nuclear energy, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the

Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72:

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2210e, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act of 1969 (42 U.S.C. 4332); Nuclear Waste Policy Act of 1982, secs. 117(a), 132, 133, 134, 135, 137, 141, 145(g), 148, 218(a) (42 U.S.C. 10137(a), 10152, 10153, 10154, 10155, 10157, 10161, 10165(g), 10168, 10198(a)); 44 U.S.C. 3504 note.

■ 2. In § 72.214, revise Certificate of Compliance No. 1015 to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1015.

Initial Certificate Effective Date: November 20, 2000.

Amendment Number 1 Effective Date: February 20, 2001.

Amendment Number 2 Effective Date: December 31, 2001.

Amendment Number 3 Effective Date: March 31, 2004.

Amendment Number 4 Effective Date: October 11, 2005.

Amendment Number 5 Effective Date: January 12, 2009.

Amendment Number 6 Effective Date: January 7, 2019.

Amendment Number 7 Effective Date: July 29, 2019.

Amendment Number 8 Effective Date: October 19, 2021.

SAR Submitted by: NAC International, Inc.

SAR Title: Final Safety Analysis Report for the NAC–UMS Universal Storage System.

Docket Number: 72–1015.

Certificate Expiration Date: November 20, 2020.

Model Number: NAC–UMS.

* * * * *

Dated: July 26, 2021.

For the Nuclear Regulatory Commission.

Margaret M. Doane,

Executive Director for Operations.

[FR Doc. 2021–16702 Filed 8–4–21; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 7

[Docket ID OCC–2020–0026]

RIN 1557–AF11

National Banks and Federal Savings Associations as Lenders

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule; Congressional Review Act revocation.

SUMMARY: Under the Congressional Review Act (CRA), Congress has passed and the President has signed a joint resolution disapproving the Office of the Comptroller of the Currency's (OCC) final rule titled ''National Banks and Federal Savings Associations as Lenders.'' This final rule established a test to determine when a national bank or Federal savings association (bank) makes a loan and is the ''true lender,'' including in the context of a relationship between a bank and a third party, such as a marketplace lender. Under the joint resolution and by operation of the CRA, this rule has no legal force or effect. The OCC is hereby removing it from the Code of Federal Regulations.

DATES: This action is effective August 5, 2021.

FOR FURTHER INFORMATION CONTACT: Andra Shuster, Senior Counsel, Karen McSweeney, Special Counsel, Alison MacDonald, Special Counsel, or Priscilla Benner, Senior Attorney, Chief Counsel's Office, (202) 649–5490, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. For persons who are deaf or hearing impaired, TTY users may contact (202) 649–5597.

SUPPLEMENTARY INFORMATION: On July 22, 2020, the Office of the Comptroller of the Currency (OCC) published in the **Federal Register** a notice of proposed rulemaking proposing a test to determine when a national bank or Federal savings association (bank) makes a loan and is the ''true lender'' (85 FR 44223). The OCC published the final rule, titled ''National Banks and Federal Savings Associations as Lenders'' and codified at 12 CFR 7.1031, in the **Federal Register** on October 30, 2020 (85 FR 68742). The final rule provided that a bank makes a loan if, as of the date of origination, it (1) is named as the lender in the loan agreement or (2) funds the loan. The final rule became effective on December 29, 2020.

The United States Senate passed a joint resolution (S.J. Res. 15) on May 11, 2021 disapproving of the rule under the Congressional Review Act (CRA) (5 U.S.C. 801 *et seq.*). The United States House of Representative passed S.J. Res. 15 on June 24, 2021. President Joseph R. Biden signed the joint resolution into law as Public Law 117–24 on June 30, 2021. Under the joint resolution and by operation of the CRA, the rule has no legal force or effect. Accordingly, the OCC is hereby removing 12 CFR 7.1031 from the Code of Federal Regulations (CFR).

This action is not an exercise of the OCC's rulemaking authority under the Administrative Procedure Act (APA) because the OCC is not ''formulating, amending, or repealing a rule'' under 5 U.S.C. 551(5). Rather, the OCC is effectuating changes to the CFR to reflect what congressional action has already accomplished. Accordingly, the OCC is not soliciting comments on this action, nor is it delaying the effective date.

List of Subjects in 12 CFR Part 7

Computer technology, Credit, Derivatives, Federal savings associations, Insurance, Investments, Metals, National banks, Reporting and recordkeeping requirements, Securities, Security bonds.

Office of the Comptroller of the Currency

For the reasons set forth above, and pursuant to the CRA (5 U.S.C. 801 *et seq.*) and Public Law 117–24, 135 Stat. 296, the OCC amends 12 CFR part 7 as follows:

PART 7—ACTIVITIES AND OPERATIONS

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

Authority: 12 U.S.C. 1 *et seq.,* 25b, 29, 71, 71a, 92, 92a, 93, 93a, 95(b)(1), 371, 371d, 481, 484, 1462a, 1463, 1464, 1465, 1818, 1828, 3102(b), and 5412(b)(2)(B).

§ 7.1031 [Removed]

■ 2. Remove § 7.1031.

Michael J. Hsu,

Acting Comptroller of the Currency.

[FR Doc. 2021–16619 Filed 8–4–21; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0131; Project Identifier MCAI–2020–01628–T; Amendment 39–21658; AD 2021–15–11]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A330–200, –300, –800, and –900 series airplanes; and Model A340–200, –300, –500, and –600 series airplanes. This AD was prompted by reports that certain oxygen supply solenoid valves are a potential source of increased flow resistance within the flightcrew oxygen system. This AD requires a special detailed inspection (flow test) of certain solenoid valves, and replacement if necessary, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 9, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 9, 2021.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0131.

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–2021–0131; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

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

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0273, dated December 9, 2020 (EASA AD 2020–0273) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus SAS Model A330–201, A330–202, A330–203, A330–223, A330–243, A330–301, A330–302, A330–303, A330–321, A330–322, A330–323, A330–341, A330–342, A330–343, A330–743L, A330–841, A330–941, A340–211, A340–212, A340–213, A340–311, A340–312, A340–313, A340–541, A340–542, A340–642, and A340–643 airplanes. Model A330–743L, A340–542, and A340–643 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A330–200, –300, –800, and –900 series airplanes; and Model A340–200, –300, –500, and –600 series airplanes. The NPRM published in the **Federal Register** on March 8, 2021 (86 FR 13239). The NPRM was prompted by reports that certain oxygen supply solenoid valves are a potential source of increased flow resistance within the flightcrew oxygen system. The NPRM proposed to require a special detailed inspection (flow test) of certain solenoid valves, and replacement if necessary, as specified in EASA AD 2020–0273.

The FAA is issuing this AD to address increased flow resistance within the flightcrew oxygen system, which could lead to a reduced flow of oxygen supply to the flightcrew oxygen masks, and in combination with in-flight depressurization, smoke in the flight deck, or a smoke evacuation procedure, could lead to flightcrew hypoxia and loss of useful consciousness, resulting in loss of control of the airplane. See the MCAI for additional background information.

Comments

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

Request To Allow Additional Source of Service Information

Delta Air Lines (DAL) asked that the FAA add a paragraph (h)(3) to the proposed AD which would allow operators to use the serial numbers identified in Safran Service Information Letter (SIL) SIL120, dated May 20, 2019, instead of the year of manufacture, to determine whether a solenoid valve is an affected part, as defined in EASA AD 2020–0273. DAL stated that the SIL contains the serial numbers and year of manufacture of affected solenoid valves.

The FAA agrees to clarify. EASA AD 2020–0273 does not specify how to determine whether a solenoid valve is an affected part. The FAA agrees that operators can use Safran SIL120 as an additional source of guidance for identification of the affected parts by the serial numbers. The FAA has added Note 1 to paragraph (g) of this AD stating that additional guidance for identification of affected parts can be found in Safran Service Information Letter SIL120, dated May 20, 2019.

Request Not To Return Affected Valves to Manufacturer

DAL asked that the requirement to send any affected solenoid valves back to Zodiac for repair, in which is specified as ''Required for Compliance'' (RC) in the applicable service information identified in EASA AD 2020–0273 be excluded in the proposed AD. DAL stated that all affected parts must pass a flow test with no defects found prior to the next flight of the airplane after installation on the airplane.

The FAA agrees with the commenter for the reasons provided. The FAA has revised paragraph (i) of this AD to exclude the requirement to send any affected solenoid valve back to Zodiac for repair.

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

EASA AD 2020–0273 describes procedures for doing a special detailed inspection (flow test) of certain solenoid valves by using the flightcrew oxygen masks and replacing any solenoid valve that fails the flow test with a serviceable part. 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 112 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
3 work-hours × $85 per hour = $255	$0	$255	$28,560

The FAA estimates the following costs to do any necessary replacement that would be required based on the results of any actions. The FAA has no way of determining the number of aircraft that might need replacement:

ESTIMATED COSTS OF ON-CONDITION ACTION

Labor cost	Parts cost	Cost per product
1 work-hour × $85 per hour = $85	Up to $5,496	Up to $5,581.

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators. The FAA does not control warranty coverage for affected operators. As a result, the FAA has included all known costs in the cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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:

2021–15–11 Airbus SAS: Amendment 39–21658; Docket No. FAA–2021–0131; Project Identifier MCAI–2020–01628–T.

(a) Effective Date

This airworthiness directive (AD) is effective September 9, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS airplanes, certificated in any category, identified in paragraphs (c)(1) through (8) of this AD.

(1) Model A330–201, –202, –203, –223, and –243 airplanes.

(2) Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(3) Model A330–841 airplanes.

(4) Model A330–941 airplanes.

(5) Model A340–211, –212, and –213 airplanes.

(6) Model A340–311, –312, and –313 airplanes.

(7) Model A340–541 airplanes.

(8) Model A340–642 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 35, Oxygen.

(e) Reason

This AD was prompted by reports that certain oxygen supply solenoid valves are a potential source of increased flow resistance within the flightcrew oxygen system. The FAA is issuing this AD to address increased flow resistance within the flightcrew oxygen system, which could lead to a reduced flow of oxygen supply to the flightcrew oxygen masks, and in combination with in-flight depressurization, smoke in the flight deck, or a smoke evacuation procedure, could lead to

flightcrew hypoxia and loss of useful consciousness, resulting in loss of control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2020–0273, dated December 9, 2020 (EASA AD 2020–0273).

Note 1 to paragraph (g): Guidance for identifying affected oxygen supply solenoid valves as defined in EASA AD 2020–0273, can be found in Safran Service Information Letter SIL120, dated May 20, 2019.

(h) Exceptions to EASA AD 2020–0273

(1) Where EASA AD 2020–0273 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2020–0273 does not apply to this AD.

(i) No Reporting or Parts Return Required

Although the service information referenced in EASA AD 2020–0273 specifies to submit certain information and return any affected solenoid valve to the manufacturer for repair, this AD does not require those actions.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2020–0273 that contains RC procedures and tests: Except as required by paragraph (j)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Related Information

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

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2020–0273, dated December 9, 2020.

(ii) [Reserved]

(3) For EASA AD 2020–0273, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu*. You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu*.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0131.

(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 July 15, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–16564 Filed 8–4–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0349; Project Identifier MCAI–2021–00103–T; Amendment 39–21660; AD 2021–15–13]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A330–841 and –941 airplanes. This AD was prompted by reports of missing or disbonded pressure seals on two thrust reverser (TR) translating cowls. This AD requires a one-time inspection of each thrust reverser for damage, seal bonding rework, and replacement of translating cowl pressure seals if necessary, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 9, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 9, 2021.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu*. You may find this IBR material on the EASA website at *https://ad.easa.europa.eu*. You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0349.

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–2021–0349; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule,

any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

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

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0035, dated January 25, 2021 (EASA AD 2021–0035) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus SAS Model A330–841 and –941 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A330–841 and –941 airplanes. The NPRM published in the **Federal Register** on May 10, 2021 (86 FR 24790). The NPRM was prompted by reports of missing or disbonded pressure seals on two TR translating cowls. The NPRM proposed to require a one-time inspection of each TR for damage, seal bonding rework, and replacement of translating cowl pressure seals if necessary, as specified in EASA AD 2021–0035.

The FAA is issuing this AD to address missing or disbonded TR translating cowl seal segments. In a case where all seal segments were missing, this condition, if not addressed, could lead to loss of thrust at maximum continuous thrust or at takeoff/go-around, possibly resulting in substantially reduced performance of the airplane. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA has considered the comment received. The Air Line Pilots Association, International, (ALPA) indicated its support for the NPRM.

Conclusion

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

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

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0035 describes procedures for inspecting each TR for damage (including tears, cracks, unwanted sealant on the contact surface, missing pieces, worn-out seals, or glass or ceramic ply that is not impacted), reworking the pressure seal bonding, and replacing damaged translating cowl pressure seals.

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 8 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
7 work-hours × $85 per hour = $595 (per thrust reverser)	$0	$595	$4,760

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 aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTION

Labor cost	Parts cost	Cost per product
22 work-hours × $85 per hour = $1,870 (per thrust reverser)	$42,268	$44,138

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators. The FAA does not control warranty coverage for affected operators. As a result, the FAA has included all known costs in the cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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:

2021–15–13 Airbus SAS: Amendment 39–21660; Docket No. FAA–2021–0349; Project Identifier MCAI–2021–00103–T.

(a) Effective Date

This airworthiness directive (AD) is effective September 9, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS Model A330–841 and –941 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 78, Engine exhaust.

(e) Reason

This AD was prompted by reports of missing or disbonded pressure seals on two thrust reverser (TR) translating cowls. The FAA is issuing this AD to address missing or disbonded TR translating cowl seal segments. In a case where all seal segments were missing, this condition, if not addressed, could lead to loss of thrust at maximum continuous thrust or at takeoff/go-around, possibly resulting in substantially reduced performance of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0035, dated January 25, 2021 (EASA AD 2021–0035).

(h) Exceptions to EASA AD 2021–0035

(1) Where EASA AD 2021–0035 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2021–0035 does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2021–0035 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(3) *Required for Compliance (RC):* Except as required by paragraph (j)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Related Information

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

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2021–0035, dated January 25, 2021.

(ii) [Reserved]

(3) For EASA AD 2021–0035, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu*. You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu*.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0349.

(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 July 16, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–16562 Filed 8–4–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0371; Project Identifier MCAI–2021–00102–T; Amendment 39–21654; AD 2021–15–07]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A330–200, –200 Freighter, –300, –800, and –900 series airplanes; and Model A340–200 and –300 series airplanes. This AD was

prompted by reports of incorrect installation of the lower attachment parts of the trimmable horizontal stabilizer actuator (THSA). This AD requires doing a detailed inspection of the THSA lower attachment parts for discrepancies and corrective action if necessary, and prohibits using earlier versions of certain airplane maintenance manual (AMM) tasks, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 9, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 9, 2021.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu*. You may find this IBR material on the EASA website at *https://ad.easa.europa.eu*. You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0371.

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–2021–0371; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

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

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0033, dated January 25, 2021 (EASA AD 2021–0033) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus SAS Model A330–200, –200 Freighter, –300, –800, and –900 series airplanes; and Model A340–200 and –300 series airplanes. Model A330–743L airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A330–200, –200 Freighter, –300, –800, and –900 series airplanes; and Model A340–200 and –300 series airplanes. The NPRM published in the **Federal Register** on May 18, 2021 (86 FR 26855). The NPRM was prompted by reports of incorrect installation of the lower attachment parts of the THSA. The NPRM proposed to require doing a detailed inspection of the THSA lower attachment parts for discrepancies and corrective action if necessary, and to prohibit using earlier versions of certain AMM tasks, as specified in EASA AD 2021–0033.

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) indicated its support for the NPRM.

Conclusion

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

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

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0033 describes procedures for doing a detailed inspection of the THSA lower attachment parts for discrepancies (*i.e.,* incorrect installation) and corrective actions (which includes detailed inspections of the horizontal stabilizer, the assembly of the trim actuating arms, the support fittings, and the upper and lower attachment plates for any cracks, dents and scratches, corrosion, deterioration of the structure, the condition of the fasteners and bearings, and repair; and re-installing or replacing the THSA lower attachment parts) if necessary. EASA AD 2021–0033 also prohibits using earlier versions of certain AMM tasks. 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 120 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
2 work-hours × $85 per hour = $170	$0	$170	$20,400

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
25 work-hours × $85 per hour = $2,125	$821,060	$823,185

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:

2021–15–07 Airbus SAS: Amendment 39–21654; Docket No. FAA–2021–0371; Project Identifier MCAI–2021–00102–T.

(a) Effective Date

This airworthiness directive (AD) is effective September 9, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS airplanes specified in paragraphs (c)(1) through (7) of this AD, certificated in any category.

(1) Model A330–201, –202, –203, –223, and –243 airplanes.

(2) Model A330–223F and –243F airplanes.

(3) Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(4) Model A330–841 airplanes.

(5) Model A330–941 airplanes.

(6) Model A340–211, –212, and –213 airplanes.

(7) Model A340–311, –312, and –313 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Reason

This AD was prompted by reports of incorrect installation of the lower attachment parts of the trimmable horizontal stabilizer actuator (THSA). The FAA is issuing this AD to address incorrect installation of the THSA lower attachment parts, which could lead to the loss of THSA primary load path and consequent activation of THSA secondary load path (which is designed to withstand full loads only for a limited period of time), and possibly result in reduced controllability of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0033, dated January 25, 2021 (EASA AD 2021–0033).

(h) Exceptions to EASA AD 2021–0033

(1) Where EASA AD 2021–0033 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2021–0033 does not apply to this AD.

(3) Where any service information in EASA AD 2021–0033 specifies to contact Airbus in case of findings, this AD requires doing a repair using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(3) *Required for Compliance (RC):* Except as required by paragraph (i)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or

changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

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

(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 Union Aviation Safety Agency (EASA) AD 2021–0033, dated January 25, 2021.

(ii) [Reserved]

(3) For EASA AD 2021–0033, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0371.

(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 July 14, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–16561 Filed 8–4–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0343; Project Identifier MCAI–2021–00013–T; Amendment 39–21655; AD 2021–15–08]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A350–941 and –1041 airplanes. This AD was prompted by a report that during an inspection of the flight deck escape hatches it was found that they were difficult to open from the inside, and several hatches were found impossible to open from the outside. Subsequent investigation revealed corrosion on the flight deck escape hatch mechanism due to condensation penetrating inside the mechanism. This AD requires replacing all affected flight deck escape hatches with serviceable hatches, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 9, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 9, 2021.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0343.

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–2021–0343; 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, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218; email *kathleen.arrigotti@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0004, dated January 6, 2021 (EASA AD 2021–0004) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus SAS Model A350–941 and –1041 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A350–941 and –1041 airplanes. The NPRM published in the **Federal Register** on May 7, 2021 (86 FR 24549). The NPRM was prompted by a report that during an inspection of the flight deck escape hatches it was found that they were difficult to open from the inside, and several hatches were found impossible to open from the outside. Subsequent investigation revealed corrosion on the flight deck escape hatch mechanism due to condensation penetrating inside the mechanism. The NPRM proposed to require replacing all affected flight deck escape hatches with serviceable hatches, as specified in EASA AD 2021–0004.

The FAA is issuing this AD to address possible inaccessibility of the flight deck escape hatch, which could impede flightcrew evacuation during an emergency. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The Air Line Pilots Association, International (ALPA) indicated its support for the NPRM.

Conclusion

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

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

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0004 describes procedures for replacing all affected flight deck escape hatches with serviceable flight deck escape hatches.

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 15 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
4 work-hours × $85 per hour = $340	$55,390	$55,730	$835,950

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators. The FAA does not control warranty coverage for affected operators. As a result, the FAA has included all known costs in the cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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:

2021–15–08 Airbus SAS: Amendment 39–21655; Docket No. FAA–2021–0343; Project Identifier MCAI–2021–00013–T.

(a) Effective Date

This airworthiness directive (AD) is effective September 9, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 52, Doors.

(e) Reason

This AD was prompted by a report that during an inspection of the flight deck escape hatches it was found that they were difficult to open from the inside, and several hatches were found impossible to open from the outside. Subsequent investigation revealed corrosion on the flight deck escape hatch mechanism due to condensation penetrating inside the mechanism. The FAA is issuing this AD to address possible inaccessibility of the flight deck escape hatch, which could impede flightcrew evacuation during an emergency.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0004, dated January 6, 2021 (EASA AD 2021–0004).

(h) Exceptions to EASA AD 2021–0004

(1) Where EASA AD 2021–0004 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2021–0004 does not apply to this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2020–0144 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or

changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

For more information about this AD, contact Kathleen Arrigotti, Aerospace Engineer, Large Aircraft Section, International Validation Branch, 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 Union Aviation Safety Agency (EASA) AD 2021–0004, dated January 6, 2021.

(ii) [Reserved]

(3) For EASA AD 2021–0004, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0343.

(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 July 14, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–16560 Filed 8–4–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0019; Project Identifier MCAI–2020–01388–T; Amendment 39–21649; AD 2021–15–02]

RIN 2120–AA64

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

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes. This AD was prompted by reports of deficiencies in the primary flight control computer (PFCC) software and the remote electronics unit (REU) software. This AD requires installation of a software update to correct deficiencies in the PFCC and REU software, as specified in a Transport Canada Civil Aviation (TCCA) 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 September 9, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 9, 2021.

ADDRESSES: For TCCA material incorporated by reference (IBR) in this AD, contact TCCA, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email *AD-CN@tc.gc.ca*; internet *https://tc.canada.ca/en/aviation.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0019.

For the Airbus Canada material identified in this AD that is not incorporated by reference, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com*; internet *https://www.bombardier.com.*

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–2021–0019; 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: Thomas Niczky, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7347; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

TCCA, which is the aviation authority for Canada, has issued TCCA AD CF–2020–36, dated October 8, 2020 (TCCA AD CF–2020–36) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes. The NPRM published in the **Federal Register** on February 24, 2021 (86 FR 11178). The NPRM was prompted by reports of deficiencies in the PFCC and REU software. The NPRM proposed to require installation of a software update to correct deficiencies in the PFCC and REU software, as specified in TCCA AD CF–2020–36.

The FAA is issuing this AD to address software deficiencies that, if not corrected, could impact flight control functions, which could prevent continued safe flight and landing. See the MCAI for additional background information.

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. Air Line Pilots Association, International (ALPA) expressed support for the NPRM.

Request To Clarify Software Installation Requirements

Delta Air Lines (Delta) requested that paragraphs (h)(3) and (4) be added to the proposed AD to clarify that it is acceptable to use a different method of upgrading the REU and PFCC with the specified software, using Airbus Canada Service Bulletin (SB) BD500–270013, Issue 001, dated July 17, 2020, only as a reference. Delta explained that it has a different policy for installing PFCC software that requires the use of a Portable Maintenance Access Terminal (PMAT), model PMAT2000, instead of a USB device.

The FAA partially agrees with the proposed changes. The FAA agrees to clarify that the PMAT method is permitted, but the FAA will not require the use of a specific model of PMAT. Also, using the service information as a reference must be specified in a note rather than in the paragraph itself. Therefore, a single paragraph (h)(3) has been added to this AD to provide this clarification, and a note has been added regarding the use of Airbus Canada Service Bulletin (SB) BD500–270013, Issue 001, dated July 17, 2020, as a reference.

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

TCCA AD CF–2020–36 describes procedures for installing updated PFCC and REU software; this installation includes prerequisites (installing certain database versions and software) that must be met prior to the installation. 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 38 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 18 work-hours × $85 per hour = Up to $1,530	Up to $21,100 *	Up to $22,630	Up to $859,940.

* Cost if operators elect to have manufacturer load software in REUs.

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators. The FAA does not control warranty coverage for affected operators. As a result, the FAA has included all known costs in the cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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:

2021–15–02 Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.): Amendment 39–21649; Docket No. FAA–2021–0019; Project Identifier MCAI–2020–01388–T.

(a) Effective Date

This airworthiness directive (AD) is effective September 9, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes, certificated in any category, as identified in Transport Canada Civil Aviation (TCCA) AD CF–2020–36, dated October 8, 2020 (TCCA AD CF–2020–36).

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight control system.

(e) Reason

This AD was prompted by reports of deficiencies in the primary flight control computer (PFCC) software and remote electronics unit (REU) software. The FAA is issuing this AD to address software deficiencies that, if not corrected, could impact flight control functions, which could prevent continued safe flight and landing.

(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, TCCA AD CF–2020–36. The prerequisites specified in the service information referenced in TCCA AD CF–2020–36 must be met prior to accomplishing the required actions.

(h) Exception and Clarification of TCCA AD CF–2020–36

(1) Where TCCA AD CF–2020–36 refers to its effective date, this AD requires using the effective date of this AD.

(2) The compliance time for the actions required by paragraph (g) of this AD is the earliest of the times specified in paragraphs (h)(2)(i) through (iii) of this AD.

(i) Prior to the accumulation of 12,000 total flight hours.

(ii) Within 56 months after the effective date of this AD.

(iii) Within 9,350 flight hours after the effective date of this AD.

(3) Where TCCA AD CF–2020–36 specifies installing software updates on the PFCCs using a USB-type device, this AD also allows the use of a portable maintenance access terminal (PMAT)-type device.

Note 1 to paragraph (h)(3): When using a PMAT-type device, guidance for upgrading the software can be found in Airbus Canada Service Bulletin (SB) BD500–270013, Issue 001, dated July 17, 2020.

(i) 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 the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov*. 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 Airbus Canada's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

(1) For more information about this AD, contact Thomas Niczky, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7347; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov*.

(2) For Airbus Canada service information identified in this AD, which is not incorporated by reference, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com*; internet *https://www.bombardier.com*. This Airbus Canada service information is available also at the address specified in paragraph (k)(4) of this AD.

(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) Transport Canada Civil Aviation (TCCA) AD CF–2020–36, dated October 8, 2020.

(ii) [Reserved]

(3) For TCCA AD CF–2020–36, contact Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email *AD-CN@tc.gc.ca*; internet *https://tc.canada.ca/en/aviation*.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0019.

(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 *fr.inspection@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued on July 8, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–16563 Filed 8–4–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0103; Project Identifier MCAI–2020–00604–E; Amendment 39–21659; AD 2021–15–12]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada Corp. Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Pratt & Whitney Canada Corp. (P&WC) PW210A and PW210S model turboshaft engines. This AD was prompted by a report from the manufacturer that the Automated Damage Tracking System (ADTS) may under-count the number of cycles accrued by the impeller and the high-pressure compressor (HPC) rotor. This AD requires use of the manual low-cycle fatigue (LCF) counting method in place of the ADTS counting method to determine the number of cycles accrued by the impeller and HPC rotor. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 9, 2021.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 9, 2021.

ADDRESSES: For service information identified in this final rule, contact Pratt & Whitney Canada Corp., 1000 Marie-Victorin, Longueuil, Quebec, J4G 1A1 Canada; phone: (800) 268–8000. 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–2020–0103.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0103; 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 mandatory continuing airworthiness information (MCAI), 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: 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 FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all P&WC PW210A and PW210S model turboshaft engines. The NPRM published in the **Federal Register** on February 26, 2021 (86 FR 11651). The NPRM was prompted by a report from the manufacturer that the ADTS may under-count the number of cycles accrued by the impeller and the HPC rotor. The impeller and HPC rotor are both life-limited components and exceeding their published life limits could result in the failure of these components. In the NPRM, the FAA proposed to require the use of the manual LCF counting method in place of the ADTS counting method to determine the number of cycles accrued by the impeller and HPC rotor. The FAA is issuing this AD to address the unsafe condition on these products.

Transport Canada Civil Aviation (Transport Canada), which is the aviation authority for Canada, has issued Transport Canada AD CF–2020–13, dated April 28, 2020 (referred to after this as ''the MCAI''), to address the unsafe condition on these products. The MCAI states:

> The engine manufacturer has discovered that the Automated Damage Tracking System (ADTS) may under-count the number of cycles accrued by the impeller and the High Pressure (HP) compressor rotor. The impeller and HP compressor rotor are both life limited components and exceeding their published life limits could result in the failure of these components.
>
> Failure of the impeller or HP compressor rotor could result in the uncontained release of the impeller or the HP compressor rotor, and subsequently could result in damage to the engine, damage to the helicopter, and loss of control of the helicopter.
>
> This [Transport Canada] AD mandates the use of the Manual Low Cycle Fatigue (LCF) Counting method to ensure that the impeller and HP compressor rotor do not exceed their published life limits.

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–2020–0103.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from one commenter. The individual commenter supported the NPRM without change.

Clarification That Reporting Is Not Required

The FAA added paragraph (i) to this AD to clarify that the reporting specified in P&WC Alert Service Bulletin (ASB) No. PW210–72–A57142, Revision No. 1, dated March 26, 2020, and P&WC ASB No. PW210–72–A57143, Revision No. 1, dated March 26, 2020, is not required by this AD.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety requires adopting the AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Pratt & Whitney Canada Corp. Alert Service Bulletin (ASB) No. PW210–72–A57142, Revision No. 1, dated March 26, 2020 (ASB No. PW210–72–A57142); and Pratt & Whitney Canada Corp. ASB No. PW210–72–A57143, Revision No. 1, dated March 26, 2020 (ASB No. PW210–72–A57143). ASB No. PW210–72–A57142 specifies procedures for calculating the correct, current LCF cycle count for the impeller and HPC rotor on PW210A model turboshaft engines. ASB No. PW210–72–A57143 specifies procedures for calculating the correct, current LCF cycle count for the impeller and HPC rotor installed on PW210S model turboshaft engines. 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 Pratt & Whitney Canada Corp. Task 00–00–00–860–801 and Task 00–00–00–860–803 of Pratt & Whitney Canada Corp. Engine Maintenance Manual (EMM), Manual Part No. 30L2392, Airworthiness Limitations Section (ALS), both at Revision 13, dated September 28, 2020.

Pratt & Whitney Canada Corp. Task 00–00–00–860–801 of Pratt & Whitney Canada Corp. EMM, Manual Part No. 30L2392, identifies the LCF life limits for the impeller and HPC rotor. Pratt & Whitney Canada Corp. Task 00–00–00–860–803 of Pratt & Whitney Canada Corp. EMM, Manual Part No. 30L2392, describes procedures for manually calculating the correct, current LCF cycle count for the impeller and HPC rotor and provides the formula for manually calculating the accumulated total cycles for the impeller and HPC rotor.

Interim Action

The FAA considers this AD to be an interim action. If final action is later identified, the FAA might consider additional rulemaking.

Costs of Compliance

The FAA estimates that this AD affects 66 engines installed on helicopters 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
Manually calculate LCF cycles	1 work-hour × $85 per hour = $85	$0	$85	$5,610

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 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:

2021–15–12 Pratt & Whitney Canada Corp.: Amendment 39–21659; Docket No. FAA–2020–0103; Project Identifier MCAI–2020–00604–E.

(a) Effective Date

This airworthiness directive (AD) is effective September 9, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Pratt & Whitney Canada Corp. (P&WC) PW210A and PW210S model turboshaft engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section.

(e) Unsafe Condition

This AD was prompted by a report from the manufacturer that the Automated Damage Tracking System (ADTS) may under-count the number of cycles accrued by the impeller and the high-pressure compressor (HPC) rotor, which could result in the failure of these components. The FAA is issuing this AD to prevent failure of the impeller and the HPC rotor. The unsafe condition, if not addressed, could result in the uncontained release of the impeller or the HPC rotor, damage to the engine, damage to the helicopter, and loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

Before exceeding 7,000 starts or 14,000 flight cycles since new on the affected engine, or prior to removal of the engine from the aircraft for the purpose of sending the engine to a repair or overhaul facility, whichever occurs first after the effective date of this AD:

(1) Use the manual low-cycle fatigue (LCF) counting method to determine the accumulated LCF cycles for the impeller and the HPC rotor using paragraph 3.A., Accomplishment Instructions, of P&WC Alert Service Bulletin (ASB) No. PW210–72–A57142, Revision No. 1, dated March 26, 2020, or P&WC ASB No. PW210–72–A57143, Revision No. 1, dated March 26, 2020, as applicable for the engine model.

(2) After performing the actions required by paragraph (g)(1) of this AD, use the manual LCF counting method specified in paragraph (g)(1) of this AD to count subsequent LCF cycles on the impeller and HPC rotor. Do not use the ADTS to count subsequent LCF cycles on the impeller or the HPC rotor.

(h) Definition

For the purpose of this AD, a ''start'' is an engine start followed by one or more flights.

(i) No Reporting Requirement

The reporting requirement specified in the Accomplishment Instructions, paragraph 3.A.4., of P&WC ASB No. PW210–72–A57142, Revision No. 1, dated March 26, 2020, and paragraph 3.A.4., of P&WC ASB No. PW210–72–A57143, Revision No. 1, dated March 26, 2020, is not required by this AD.

(j) 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 ECO Branch, send it to the attention of the person identified in Related Information.

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

(k) Related Information

(1) For more information about this AD, contact 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 Transport Canada Civil Aviation (TCCA) AD CF–2020–13, dated April 28, 2020, for more information. You may examine the TCCA AD in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0103.

(l) 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) Pratt & Whitney Canada Corp. (P&WC) Alert Service Bulletin (ASB) No. PW210–72–A57142, Revision No. 1, dated March 26, 2020.

(ii) P&WC ASB No. PW210–72–A57143, Revision No. 1, dated March 26, 2020.

(3) For P&WC service information identified in this AD, contact Pratt & Whitney Canada Corp., 1000 Marie-Victorin, Longueuil, Quebec, J4G 1A1 Canada; phone: (800) 268–8000.

(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 July 15, 2021.

Ross Landes,

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

[FR Doc. 2021–16544 Filed 8–4–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–1181; Project Identifier MCAI–2020–01368–T; Amendment 39–21617; AD 2021–13–12]

RIN 2120–AA64

Airworthiness Directives; 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 all Bombardier, Inc., Model CL–600–1A11 (600), CL–600–2A12 (601), and CL–600–2B16 (601–3A, 601–3R and 604 Variants) airplanes. This AD was prompted by reports of corrosion on the passenger door internal structure of in-service airplanes. This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 9, 2021.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 9, 2021.

ADDRESSES: For service information identified in this final rule, contact Bombardier, Inc., 200 Côte-Vertu Road West, Dorval, Québec H4S 2A3, Canada; North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; email *ac.yul@aero.bombardier.com;* internet *https://www.bombardier.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–2020–1181.

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–2020–1181; 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: Aziz Ahmed, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7329; 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–2016–37, dated November 25, 2016 (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Bombardier, Inc., Model CL–600–1A11 (600), CL–600–2A12 (601), and CL–600–2B16 (601–3A, 601–3R, and 604 Variants) airplanes. You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1181.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Bombardier, Inc., Model CL–600–1A11 (600), CL–600–2A12 (601), and CL–600–2B16 (601–3A, 601–3R and 604 Variants) airplanes. The NPRM published in the **Federal Register** on March 17, 2021 (86 FR 14551). The NPRM was prompted by reports of corrosion on the passenger door internal structure of in-service airplanes caused by an accumulation of moisture under the epoxy ramp. The NPRM proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA is issuing this AD to address corrosion on the passenger door internal structure and consequent loss of the structural integrity of the forward passenger door. See the MCAI for additional background information.

Comments

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

Conclusion

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

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed the following Bombardier service information, which describes new or more restrictive airworthiness limitations for the upper latch pins of the forward passenger door. These documents are distinct since they apply to different airplane configurations. (Note: The asterisk (or ''one star'') with the last three digits of the task number indicates that the task is an airworthiness limitation task.)

- Task 53–10–01–101 *, ''Upper Latch Pins of the Passenger Door,'' of Bombardier Challenger CL–600–1A11 Time Limits/Maintenance Checks (TLMC), Product Support Publication (PSP) 605, Revision 39, dated January 8, 2018.
- Task 53–10–01–101 *, ''Upper Latch Pins of the Passenger Door,'' of Bombardier Challenger CL–600–2A12 TLMC, PSP 601–5, Revision 46, dated January 8, 2018.
- Task 53–10–01–101 *, ''Upper Latch Pins of the Passenger Door,'' of Bombardier Challenger CL–600–2B16 TLMC, PSP 601A–5, Revision 42, dated January 8, 2018.
- Task 53–20–00–188 *, ''Special Detailed Inspection of the Upper Latch Pins of the Passenger Door,'' of Bombardier Challenger TLMC, CH 604 TLMC, Revision 32, dated December 18, 2019.
- Task 53–20–00–188 *, ''Special Detailed Inspection of the Upper Latch Pins of the Passenger Door,'' of Bombardier Challenger TLMC, CH 605 TLMC, Revision 21, dated December 18, 2019.

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

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

operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the agency estimates the average total cost per operator to be $7,650 (90 work-hours × $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:

2021–13–12 Bombardier, Inc.: Amendment 39–21617; Docket No. FAA–2020–1181; Project Identifier MCAI–2020–01368–T.

(a) Effective Date

This airworthiness directive (AD) is effective September 9, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Bombardier, Inc., Model CL–600–1A11 (600), CL–600–2A12 (601), and CL–600–2B16 (601–3A, 601–3R, and 604 Variants) airplanes, certificated in any category.

(d) Subject

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

(e) Reason

This AD was prompted by reports of corrosion on the passenger door internal structure of in-service airplanes. This AD was further prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address corrosion on the passenger door internal structure and consequent loss of the structural integrity of the forward passenger door.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

Within 30 days after the effective date of this AD: Revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the applicable time limits/maintenance checks (TLMC) revision specified in figure 1 to paragraph (g) of this AD. The initial compliance time for doing the tasks is at the time specified in the TLMC, or within 30 days after the effective date of this AD, whichever occurs later.

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Figure 1 to paragraph (g) – *TLMC Revisions*

Airplane Model	TLMC Task No.	Task Title	TLMC Manual No.
CL-600-1A11 (CL-600)	53-10-01-101*[1]	Upper Latch Pins of the Passenger Door	Product Support Publication (PSP) 605, Revision 39, dated January 8, 2018
CL-600-2A12 (CL-601)	53-10-01-101*	Upper Latch Pins of the Passenger Door	PSP 601-5, Revision 46, dated January 8, 2018
CL-600-2B16 (CL-601-3A/3R)	53-10-01-101*	Upper Latch Pins of the Passenger Door	PSP 601A-5, Revision 42, dated January 8, 2018
CL-600-2B16 (CL-604)	53-20-00-188*	Special Detailed Inspection of the Upper Latch Pins of the Passenger Door	CH 604 TLMC, Revision 32, dated December 18, 2019
CL-600-2B16 (CL-605[2])	53-20-00-188*	Special Detailed Inspection of the Upper Latch Pins of the Passenger Door	CH 605 TLMC, Revision 21, dated December 18, 2019

[1] The asterisk (or "one star") with the last three digits of the task number indicates that the task is an airworthiness limitation task.
[2] Model CL-600-2B16 (604 Variant), referred to by the marketing designation CL-605.

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(h) No Alternative Actions or Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (i)(1) of this AD.

(i) 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 Transport Canada Civil Aviation (TCCA); or Bombardier Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF–2016–37, dated November 25, 2016, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1181.

(2) For more information about this AD, contact Aziz Ahmed, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7329; fax 516–794–5531; email *9-avs-nyaco-cos@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) Task 53–10–01–101 *, ''Upper Latch Pins of the Passenger Door,'' of Bombardier Challenger CL–600–1A11 Time Limits/ Maintenance Checks (TLMC), Product Support Publication (PSP) 605, Revision 39, dated January 8, 2018.

(ii) Task 53–10–01–101 *, ''Upper Latch Pins of the Passenger Door,'' of Bombardier Challenger CL–600–2A12 TLMC, PSP 601–5, Revision 46, dated January 8, 2018.

(iii) Task 53–10–01–101 *, ''Upper Latch Pins of the Passenger Door,'' of Bombardier Challenger CL–600–2B16 TLMC, PSP 601A–5, Revision 42, dated January 8, 2018.

(iv) Task 53–20–00–188 *, ''Special Detailed Inspection of the Upper Latch Pins

of the Passenger Door,'' of Bombardier Challenger TLMC, CH 604 TLMC, Revision 32, dated December 18, 2019.

(v) Task 53–20–00–188 *, ''Special Detailed Inspection of the Upper Latch Pins of the Passenger Door,'' of Bombardier Challenger TLMC, CH 605 TLMC, Revision 21, dated December 18, 2019.

(3) For service information identified in this AD, contact Bombardier, Inc., 200 Côte-Vertu Road West, Dorval, Québec H4S 2A3, Canada; North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; email *ac.yul@aero.bombardier.com;* internet *https://www.bombardier.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 June 16, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–16565 Filed 8–4–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31383; Amdt. No. 3968]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective August 5, 2021. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 5, 2021.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC, 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to

the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on July 23, 2021.

Wade E.K. Terrell,

Aviation Safety, Flight Standards Service, Manager (A), Flight Technologies and Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, CFR part 97, (is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
9–Sep–21	KS	Pratt	Pratt Rgnl	1/0508	6/10/21	RNAV (GPS) RWY 35, Amdt 1.
9–Sep–21	KS	Pratt	Pratt Rgnl	1/0509	6/10/21	RNAV (GPS) RWY 17, Amdt 1.
9–Sep–21	IN	Valparaiso	Porter County Rgnl	1/0697	5/20/21	RNAV (GPS) RWY 27, Orig-A.
9–Sep–21	IN	Valparaiso	Porter County Rgnl	1/0698	5/20/21	ILS RWY 27, Amdt 3A.
9–Sep–21	IN	Valparaiso	Porter County Rgnl	1/0699	5/20/21	RNAV (GPS) RWY 9, Amdt 1A.
9–Sep–21	MI	Gladwin	Gladwin Zettel Meml	1/0713	5/19/21	RNAV (GPS) RWY 9, Orig-B.
9–Sep–21	MI	Gladwin	Gladwin Zettel Meml	1/0714	5/19/21	RNAV (GPS) RWY 27, Orig-B.
9–Sep–21	MN	Redwood Falls	Redwood Falls Muni	1/0782	5/21/21	VOR-A, Amdt 5.
9–Sep–21	MN	Redwood Falls	Redwood Falls Muni	1/0785	5/21/21	RNAV (GPS) RWY 30, Orig.
9–Sep–21	MN	Eveleth	Eveleth-Virginia Muni	1/1058	5/21/21	VOR-A, Amdt 2A.
9–Sep–21	MN	Eveleth	Eveleth-Virginia Muni	1/1067	5/21/21	RNAV (GPS) RWY 27, Orig-B.
9–Sep–21	NE	Alliance	Alliance Muni	1/1215	7/13/21	RNAV (GPS) RWY 8, Orig-A.
9–Sep–21	NE	Alliance	Alliance Muni	1/1221	7/13/21	RNAV (GPS) RWY 12, Orig-A.
9–Sep–21	NE	Alliance	Alliance Muni	1/1227	7/13/21	RNAV (GPS) RWY 26, Orig-A.
9–Sep–21	NE	Alliance	Alliance Muni	1/1245	7/13/21	RNAV (GPS) RWY 30, Amdt 1A.
9–Sep–21	NE	Alliance	Alliance Muni	1/1248	7/13/21	VOR RWY 12, Amdt 3C.
9–Sep–21	NE	Alliance	Alliance Muni	1/1259	7/13/21	VOR RWY 30, Amdt 3A.
9–Sep–21	AR	Morrilton	Morrilton Muni	1/1276	7/19/21	RNAV (GPS) RWY 27, Orig.
9–Sep–21	OK	Oklahoma City	Sundance	1/1518	7/14/21	RNAV (GPS) RWY 18, Amdt 1D.
9–Sep–21	OK	Oklahoma City	Sundance	1/1520	7/14/21	RNAV (GPS) RWY 36, Amdt 1C.
9–Sep–21	PA	St Marys	St Marys Muni	1/1549	7/14/21	RNAV (GPS) RWY 28, Amdt 1D.
9–Sep–21	PA	St Marys	St Marys Muni	1/1556	7/14/21	LOC RWY 28, Amdt 4D.
9–Sep–21	PA	St Marys	St Marys Muni	1/1557	7/14/21	RNAV (GPS) RWY 10, Amdt 1B.
9–Sep–21	NE	Alliance	Alliance Muni	1/1655	7/13/21	ILS OR LOC RWY 30, Orig-A.
9–Sep–21	SC	Manning	Santee Cooper Rgnl	1/1697	6/9/21	VOR/DME OR GPS-A, Amdt 4A.
9–Sep–21	IL	Quincy	Quincy Rgnl-Baldwin Fld	1/1698	5/21/21	LOC/DME BC RWY 22, Amdt 6A.
9–Sep–21	GA	Jesup	Jesup-Wayne County	1/1808	7/16/21	RNAV (GPS) RWY 11, Orig-A.
9–Sep–21	GA	Jesup	Jesup-Wayne County	1/1832	7/16/21	RNAV (GPS) RWY 29, Orig-A.
9–Sep–21	TX	Terrell	Terrell Muni	1/1896	7/8/21	RNAV (GPS) RWY 17, Orig-A.
9–Sep–21	TX	Terrell	Terrell Muni	1/1907	7/8/21	RNAV (GPS) RWY 35, Orig-A.
9–Sep–21	MI	Pellston	Pellston Rgnl/Emmet County	1/2012	7/19/21	VOR RWY 23, Amdt 16B.
9–Sep–21	OK	Oklahoma City	Sundance	1/2309	7/14/21	VOR RWY 18, Amdt 1F.
9–Sep–21	SC	Pickens	Pickens County	1/2780	4/23/21	RNAV (GPS) RWY 23, Orig-A.
9–Sep–21	SC	Pickens	Pickens County	1/2782	4/23/21	RNAV (GPS) RWY 5, Orig.
9–Sep–21	CA	Lancaster	General Wm J Fox Airfield	1/3309	7/6/21	RNAV (GPS) RWY 24, Orig.
9–Sep–21	CA	Lancaster	General Wm J Fox Airfield	1/3310	7/6/21	RNAV (GPS) RWY 6, Orig.
9–Sep–21	AL	Wetumpka	Wetumpka Muni	1/3499	6/8/21	RNAV (GPS) RWY 27, Orig-A.
9–Sep–21	GA	Jekyll Island	Jekyll Island	1/3503	6/9/21	VOR-A, Amdt 10A.
9–Sep–21	GA	Jekyll Island	Jekyll Island	1/3505	6/9/21	RNAV (GPS) RWY 36, Amdt 1A.
9–Sep–21	ME	Millinocket	Millinocket Muni	1/4047	4/23/21	RNAV (GPS) RWY 29, Amdt 1B.
9–Sep–21	ME	Millinocket	Millinocket Muni	1/4048	4/23/21	VOR RWY 29, Orig-B.
9–Sep–21	AL	St Elmo	St Elmo	1/4435	5/25/21	RNAV (GPS) RWY 6, Orig.
9–Sep–21	IN	Lafayette	Purdue University	1/4592	6/17/21	VOR-A, Amdt 26A.
9–Sep–21	IN	Lafayette	Purdue University	1/4593	6/17/21	RNAV (GPS) RWY 28, Amdt 1A.
9–Sep–21	IN	Lafayette	Purdue University	1/4594	6/17/21	ILS OR LOC RWY 10, Amdt 11B.
9–Sep–21	IN	Lafayette	Purdue University	1/4595	6/17/21	RNAV (GPS) RWY 10, Amdt 1A.
9–Sep–21	MI	Mount Pleasant	Mount Pleasant Muni	1/4617	4/26/21	RNAV (GPS) RWY 9, Orig-A.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
9–Sep–21	MI	Mount Pleasant	Mount Pleasant Muni	1/4618	4/26/21	RNAV (GPS) RWY 27, Orig-B.
9–Sep–21	MI	Mount Pleasant	Mount Pleasant Muni	1/4620	4/26/21	VOR RWY 27, Amdt 1A.
9–Sep–21	FL	Pensacola	Pensacola Intl	1/4626	4/23/21	LOC RWY 26, Amdt 1B.
9–Sep–21	FL	Pensacola	Pensacola Intl	1/4628	4/23/21	ILS OR LOC RWY 17, Amdt 14C.
9–Sep–21	FL	Pensacola	Pensacola Intl	1/4637	4/23/21	RNAV (GPS) RWY 17, Amdt 2E.
9–Sep–21	FL	Pensacola	Pensacola Intl	1/4643	4/23/21	VOR RWY 8, Amdt 4B.
9–Sep–21	FL	Pensacola	Pensacola Intl	1/4645	4/23/21	RNAV (GPS) RWY 35, Amdt 2D.
9–Sep–21	FL	Pensacola	Pensacola Intl	1/4647	4/23/21	RNAV (GPS) RWY 26, Amdt 2D.
9–Sep–21	FL	Pensacola	Pensacola Intl	1/4648	4/23/21	RNAV (GPS) RWY 8, Amdt 2E.
9–Sep–21	NJ	Mount Holly	South Jersey Rgnl	1/4649	4/23/21	RNAV (GPS) RWY 26, Amdt 1C.
9–Sep–21	FL	Williston	Williston Muni	1/4650	4/23/21	RNAV (GPS) RWY 23, Orig-C.
9–Sep–21	FL	Williston	Williston Muni	1/4654	4/23/21	RNAV (GPS) RWY 5, Orig-C.
9–Sep–21	MI	Pellston	Pellston Rgnl/Emmet County	1/4688	7/19/21	RNAV (GPS) RWY 5, Orig-C.
9–Sep–21	FL	Lake Wales	Lake Wales Muni	1/4808	4/23/21	VOR/DME-B, Amdt 3.
9–Sep–21	FL	Lake Wales	Lake Wales Muni	1/4809	4/23/21	RNAV (GPS) RWY 24, Orig-A.
9–Sep–21	FL	Lake Wales	Lake Wales Muni	1/4810	4/23/21	RNAV (GPS) RWY 6, Orig-C.
9–Sep–21	PA	Connellsville	Joseph A. Hardy Connellsville.	1/4818	4/26/21	RNAV (GPS) RWY 5, Orig-A.
9–Sep–21	PA	Connellsville	Joseph A. Hardy Connellsville.	1/4819	4/26/21	LOC RWY 5, Amdt 4A.
9–Sep–21	WI	Menomonie	Menomonie Muni-Score Field	1/5361	7/8/21	VOR/DME RWY 27, Amdt 1A.
9–Sep–21	AR	Pine Bluff	Pinebluff Rgnl/Grider Fld	1/5449	4/29/21	ILS OR LOC RWY 18, Amdt 3C.
9–Sep–21	AR	Pine Bluff	Pinebluff Rgnl/Grider Fld	1/5452	4/29/21	RNAV (GPS) RWY 36, Amdt 1C.
9–Sep–21	AR	Pine Bluff	Pinebluff Rgnl/Grider Fld	1/5453	4/29/21	RNAV (GPS) RWY 18, Amdt 1C.
9–Sep–21	TX	Pampa	Perry Lefors Fld	1/5460	4/29/21	VOR/DME-A, Amdt 3.
9–Sep–21	TX	Pampa	Perry Lefors Fld	1/5461	4/29/21	RNAV (GPS) RWY 17, Orig-A.
9–Sep–21	TX	Snyder	Winston Fld	1/5465	4/29/21	NDB RWY 35, Amdt 2B.
9–Sep–21	TX	Snyder	Winston Fld	1/5472	4/29/21	RNAV (GPS) RWY 35, Amdt 1A.
9–Sep–21	NC	Rockingham	Richmond County	1/5478	4/28/21	RNAV (GPS) RWY 32, Orig-C.
9–Sep–21	CA	Montague	Siskiyou County	1/5480	4/28/21	NDB OR GPS-A, Amdt 7A.
9–Sep–21	CA	Fortuna	Rohnerville	1/5555	4/28/21	GPS RWY 11, Orig-A.
9–Sep–21	CA	Fortuna	Rohnerville	1/5556	4/28/21	GPS RWY 29, Orig-A.
9–Sep–21	AR	Searcy	Searcy Muni	1/5739	5/19/21	RNAV (GPS) RWY 19, Amdt 1.
9–Sep–21	AR	Searcy	Searcy Muni	1/5740	5/19/21	ILS OR LOC RWY 1, Orig.
9–Sep–21	MN	Red Wing	Red Wing Rgnl	1/5804	7/19/21	ILS OR LOC RWY 9, Amdt 1A.
9–Sep–21	MN	Red Wing	Red Wing Rgnl	1/5808	7/19/21	RNAV (GPS) RWY 27, Amdt 2C.
9–Sep–21	MN	Red Wing	Red Wing Rgnl	1/5813	7/19/21	RNAV (GPS) RWY 9, Amdt 1A.
9–Sep–21	PA	New Castle	New Castle Muni	1/6036	6/9/21	RNAV (GPS) RWY 5, Amdt 1C.
9–Sep–21	PA	New Castle	New Castle Muni	1/6054	6/9/21	RNAV (GPS) RWY 23, Amdt 1C.
9–Sep–21	MI	Grayling	Grayling Aaf	1/6099	7/14/21	NDB RWY 14, Amdt 8C.
9–Sep–21	MI	Grayling	Grayling Aaf	1/6100	7/14/21	RNAV (GPS) RWY 14, Orig-C.
9–Sep–21	MI	Grayling	Grayling Aaf	1/6103	7/14/21	VOR RWY 14, Amdt 2C.
9–Sep–21	FL	Winter Haven	Winter Haven Rgnl	1/6111	7/14/21	RNAV (GPS) RWY 11, Orig-A.
9–Sep–21	FL	Winter Haven	Winter Haven Rgnl	1/6113	7/14/21	RNAV (GPS) RWY 5, Amdt 1C.
9–Sep–21	FL	Winter Haven	Winter Haven Rgnl	1/6116	7/14/21	VOR-A, Amdt 7A.
9–Sep–21	MO	Stockton	Stockton Muni	1/6138	4/29/21	RNAV (GPS) RWY 1, Orig-B.
9–Sep–21	MO	Stockton	Stockton Muni	1/6139	4/29/21	RNAV (GPS) RWY 19, Orig-C.
9–Sep–21	MO	Stockton	Stockton Muni	1/6140	4/29/21	VOR/DME-A, Amdt 3A.
9–Sep–21	MI	Pellston	Pellston Rgnl/Emmet County	1/6426	7/19/21	RNAV (GPS) RWY 32, Orig-C.
9–Sep–21	MI	Pellston	Pellston Rgnl/Emmet County	1/6430	7/19/21	RNAV (GPS) RWY 23, Orig-C.
9–Sep–21	MI	Pellston	Pellston Rgnl/Emmet County	1/6432	7/19/21	ILS OR LOC RWY 32, Amdt 11C.
9–Sep–21	MO	Moberly	Omar N. Bradley	1/6716	4/28/21	RNAV (GPS) RWY 31, Orig-B.
9–Sep–21	MO	Moberly	Omar N. Bradley	1/6717	4/28/21	RNAV (GPS) RWY 13, Orig-A.
9–Sep–21	IA	Cresco	Ellen Church Fld	1/6778	5/21/21	GPS RWY 33, Orig-B.
9–Sep–21	MN	Rushford	Rushford Muni-Robert W. Bunke Fld.	1/7084	4/29/21	RNAV (GPS) RWY 34, Orig-B.
9–Sep–21	MN	Rushford	Rushford Muni-Robert W. Bunke Fld.	1/7085	4/29/21	VOR-A, Amdt 2A.
9–Sep–21	AR	Searcy	Searcy Muni	1/7209	5/19/21	RNAV (GPS) RWY 1, Amdt 1A.
9–Sep–21	OH	Salem	Salem Airpark Inc	1/7213	7/19/21	VOR OR GPS-A, Amdt 1.
9–Sep–21	OK	Ponca City	Ponca City Rgnl	1/7622	7/13/21	VOR-A, Amdt 10B.
9–Sep–21	OK	Ponca City	Ponca City Rgnl	1/7625	7/13/21	RNAV (GPS) RWY 35, Amdt 1.
9–Sep–21	OK	Ponca City	Ponca City Rgnl	1/7627	7/13/21	RNAV (GPS) RWY 17, Amdt 1.
9–Sep–21	OK	Ponca City	Ponca City Rgnl	1/7628	7/13/21	ILS OR LOC/DME RWY 17, Amdt 3.
9–Sep–21	KS	Neodesha	Neodesha Muni	1/7684	5/21/21	VOR OR GPS RWY 2, Amdt 2A.
9–Sep–21	CA	Placerville	Placerville	1/7692	5/27/21	RNAV (GPS) RWY 5, Amdt 2A.
9–Sep–21	OH	Columbus	Ohio State University	1/7777	5/20/21	ILS OR LOC RWY 9R, Amdt 5B.
9–Sep–21	OH	Columbus	Ohio State University	1/7779	5/20/21	NDB RWY 9R, Amdt 3B.
9–Sep–21	OH	Columbus	Ohio State University	1/7780	5/20/21	RNAV (GPS) RWY 9R, Amdt 1B.
9–Sep–21	OH	Columbus	Ohio State University	1/7781	5/20/21	RNAV (GPS) RWY 27L, Orig-B.
9–Sep–21	IL	Moline	Quad City Intl	1/7868	6/28/21	RNAV (GPS) RWY 31, Amdt 1C.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
9–Sep–21	IL	Moline	Quad City Intl	1/7869	6/28/21	RNAV (GPS) RWY 27, Amdt 1D.
9–Sep–21	IL	Moline	Quad City Intl	1/7870	6/28/21	RNAV (GPS) RWY 13, Amdt 1C.
9–Sep–21	IL	Moline	Quad City Intl	1/7871	6/28/21	RNAV (GPS) RWY 9, Amdt 1D.
9–Sep–21	IL	Moline	Quad City Intl	1/7872	6/28/21	ILS OR LOC RWY 27, Amdt 2B.
9–Sep–21	IL	Moline	Quad City Intl	1/7873	6/28/21	ILS OR LOC RWY 9, Amdt 31D.
9–Sep–21	TX	Nacogdoches	Nacogdoches A L Mangham Jr Rgnl.	1/8266	7/19/21	ILS OR LOC RWY 36, Amdt 3E.
9–Sep–21	TX	Nacogdoches	Nacogdoches A L Mangham Jr Rgnl.	1/8268	7/19/21	RNAV (GPS) RWY 18, Orig-A.
9–Sep–21	TX	Nacogdoches	Nacogdoches A L Mangham Jr Rgnl.	1/8271	7/19/21	RNAV (GPS) RWY 36, Orig-B.
9–Sep–21	WI	Waukesha	Waukesha County	1/8321	5/21/21	RNAV (GPS) RWY 28, Orig.
9–Sep–21	WI	Waukesha	Waukesha County	1/8322	5/21/21	RNAV (GPS) RWY 10, Orig-A.
9–Sep–21	WI	Waukesha	Waukesha County	1/8323	5/21/21	VOR-A, Amdt 16.
9–Sep–21	WI	Waukesha	Waukesha County	1/8324	5/21/21	ILS OR LOC RWY 10, Amdt 2B.
9–Sep–21	TX	Beaumont/Port Arthur.	Jack Brooks Rgnl	1/8436	5/26/21	RNAV (GPS) RWY 12, Orig-B.
9–Sep–21	TX	Beaumont/Port Arthur.	Jack Brooks Rgnl	1/8439	5/26/21	VOR RWY 12, Amdt 9D.
9–Sep–21	TX	Beaumont/Port Arthur.	Jack Brooks Rgnl	1/8449	5/26/21	VOR/DME RWY 34, Amdt 7E.
9–Sep–21	NC	Albemarle	Stanly County	1/9212	6/11/21	RNAV (GPS) RWY 22L, Orig.
9–Sep–21	NC	Albemarle	Stanly County	1/9224	6/11/21	NDB RWY 22L, Amdt 1.
9–Sep–21	MS	Ripley	Ripley	1/9337	7/14/21	VOR/DME-A, Amdt 2A.
9–Sep–21	NC	Albemarle	Stanly County	1/9379	6/11/21	RNAV (GPS) RWY 4R, Orig.
9–Sep–21	NC	Albemarle	Stanly County	1/9381	6/11/21	ILS OR LOC RWY 22L, Amdt 1B.
9–Sep–21	NJ	Atlantic City	Atlantic City Intl	1/9569	7/16/21	ILS OR LOC/DME RWY 31, Orig-C.
9–Sep–21	NJ	Atlantic City	Atlantic City Intl	1/9570	7/16/21	ILS OR LOC RWY 13, Amdt 8B.
9–Sep–21	NJ	Atlantic City	Atlantic City Intl	1/9571	7/16/21	RNAV (GPS) RWY 4, Amdt 2B.
9–Sep–21	NJ	Atlantic City	Atlantic City Intl	1/9572	7/16/21	RNAV (GPS) RWY 22, Amdt 4B.
9–Sep–21	NJ	Atlantic City	Atlantic City Intl	1/9573	7/16/21	RNAV (GPS) Y RWY 13, Amdt 4A.
9–Sep–21	NJ	Atlantic City	Atlantic City Intl	1/9580	7/16/21	RNAV (GPS) Y RWY 31, Amdt 3.
9–Sep–21	NJ	Atlantic City	Atlantic City Intl	1/9583	7/16/21	VOR RWY 4, Amdt 15C.
9–Sep–21	NJ	Atlantic City	Atlantic City Intl	1/9587	7/16/21	VOR/DME RWY 22, Amdt 6C.
9–Sep–21	NJ	Atlantic City	Atlantic City Intl	1/9588	7/16/21	VOR RWY 13, Amdt 4B.
9–Sep–21	NJ	Atlantic City	Atlantic City Intl	1/9593	7/16/21	VOR RWY 31, Amdt 1B.
9–Sep–21	MS	New Albany	New Albany-Union County	1/9708	7/19/21	RNAV (GPS) RWY 18, Orig.
9–Sep–21	FL	Bartow	Bartow Exec	1/9881	6/9/21	VOR RWY 9L, Amdt 2E.
9–Sep–21	LA	Eunice	Eunice	1/9883	6/10/21	RNAV (GPS) RWY 16, Orig-A.
9–Sep–21	KY	Flemingsburg	Fleming-Mason	1/9886	6/8/21	RNAV (GPS) RWY 25, Orig-A.
9–Sep–21	TN	Columbia/Mount Pleasant.	Maury County	1/9891	6/9/21	RNAV (GPS) RWY 6, Orig.
9–Sep–21	TN	Columbia/Mount Pleasant.	Maury County	1/9892	6/9/21	RNAV (GPS) RWY 24, Orig-A.
9–Sep–21	OH	Columbus	Rickenbacker Intl	1/9901	5/20/21	RNAV (GPS) RWY 23L, Orig-A.
9–Sep–21	OH	Columbus	Rickenbacker Intl	1/9902	5/20/21	ILS OR LOC RWY 5R, Amdt 3D.
9–Sep–21	OH	Columbus	Rickenbacker Intl	1/9906	5/20/21	RNAV (GPS) RWY 23R, Orig-C.
9–Sep–21	OH	Columbus	Rickenbacker Intl	1/9914	5/20/21	RNAV (GPS) RWY 5R, Amdt 1C.
9–Sep–21	OH	Columbus	Rickenbacker Intl	1/9915	5/20/21	RNAV (GPS) RWY 5L, Orig-B.
9–Sep–21	OH	Columbus	Rickenbacker Intl	1/9925	5/20/21	ILS OR LOC RWY 23L, Amdt 1A.
9–Sep–21	OH	Columbus	Rickenbacker Intl	1/9932	5/20/21	ILS OR LOC RWY 5L, Amdt 1B.
9–Sep–21	KS	Eureka	Lt. William M. Milliken	1/9933	5/21/21	VOR/DME RWY 18, Amdt 2C.
9–Sep–21	KS	Eureka	Lt. William M. Milliken	1/9939	5/21/21	RNAV (GPS) RWY 18, Orig-B.
9–Sep–21	SC	Andrews	Robert F. Swinnie	1/9962	6/9/21	NDB RWY 36, Orig-B.
9–Sep–21	CT	Hartford	Hartford-Brainard	1/9966	6/9/21	VOR-A, Amdt 10A.
9–Sep–21	CT	Hartford	Hartford-Brainard	1/9969	6/9/21	RNAV (GPS) RWY 2, Orig-C.
9–Sep–21	CT	Hartford	Hartford-Brainard	1/9970	6/9/21	LDA RWY 2, Amdt 2B.

[FR Doc. 2021–16585 Filed 8–4–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31382; Amdt. No. 3967]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPS) and associated Takeoff Minimums and Obstacle Departure procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective August 5, 2021. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 5, 2021.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30. 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, 8260–15B, when required by an entry on 8260–15A, and 8260–15C.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers or aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the typed of SIAPS, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flights safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on July 23, 2021.

Wade E.K. Terrell,

Aviation Safety, Flight Standards Service, Manager (A), Flight Technologies and Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CRF part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 9 September 2021

Marathon, FL, KMTH, RNAV (GPS) RWY 7, Orig-B
Lincoln Park, NJ, N07, RNAV (GPS) RWY 1, Amdt 1
Lincoln Park, NJ, N07, RNAV (GPS) RWY 19, Amdt 1

Effective 7 October 2021

Koyukuk, AK, Koyukuk, DIBVY THREE Graphic DP
Port Alsworth, AK, Wilder Runway, LLC, MARVN ONE Graphic DP
Port Alsworth, AK, PAKX, RNAV (GPS) RWY 6R, Orig
Port Alsworth, AK, Wilder Runway, LLC, Takeoff Minimums and Obstacle DP, Orig
Talladega, AL, KASN, RNAV (GPS) RWY 4, Amdt 2A
Blytheville, AR, KHKA, RNAV (GPS) RWY 18, Orig-A
Blytheville, AR, KHKA, RNAV (GPS) RWY 36, Orig-B
Corning, AR, 4M9, RNAV (GPS) RWY 18, Orig-D
Corning, AR, 4M9, RNAV (GPS) RWY 36, Orig-E
Crossett, AR, KCRT, RNAV (GPS) RWY 23, Orig-D
Crossett, AR, KCRT, VOR–A, Orig-D, CANCELLED
Hope, AR, M18, RNAV (GPS) RWY 4, Orig-A
Hope, AR, M18, RNAV (GPS) RWY 22, Orig-A
Lake Village, AR, M32, VOR–A, Amdt 8C, CANCELLED
Mc Gehee, AR, 7M1, VOR/DME–A, Amdt 3, CANCELLED
Monticello, AR, KLLQ, RNAV (GPS) RWY 3, Amdt 1E
Monticello, AR, KLLQ, VOR–A, Amdt 6C, CANCELLED
Pine Bluff, AR, KPBF, ILS OR LOC RWY 18, Amdt 3E
Los Angeles, CA, KLAX, ILS OR LOC RWY 25L, ILS RWY 25L (CAT II), ILS RWY 25L (CAT III), Amdt 14D
Los Angeles, CA, KLAX, RNAV (RNP) Z RWY 24R, Amdt 1D
Oakdale, CA, O27, RNAV (GPS) RWY 10, Amdt 2A
Redlands, CA, Redlands Muni, Takeoff Minimums and Obstacle DP, Orig-B
Denver, CO, KDEN, ILS OR LOC RWY 34L, ILS RWY 34L (SA CAT I), ILS RWY 34L (CAT II), ILS RWY 34L (CAT III), Amdt 2C
Denver, CO, KDEN, RNAV (GPS) Y RWY 34L, Amdt 2D
Immokalee, FL, KIMM, RNAV (GPS) RWY 36, Amdt 1B
Lakeland, FL, Lakeland Linder Intl, Takeoff Minimums and Obstacle DP, Amdt 1C
Orlando, FL, KMCO, ILS OR LOC RWY 18R, Amdt 11A
Orlando, FL, KMCO, RNAV (GPS) RWY 18R, Amdt 2A
Quincy, FL, 2J9, RNAV (GPS)-A, Orig
Quincy, FL, 2J9, VOR/DME–A, Amdt 1, CANCELLED
Washington, GA, KIIY, VOR/DME RWY 13, Amdt 3B, CANCELLED
Ankeny, IA, KIKV, RNAV (GPS) RWY 22, Amdt 1A
Jefferson, IA, KEFW, NDB RWY 32, Amdt 6A, CANCELLED
Jefferson, IA, KEFW, RNAV (GPS) RWY 14, Amdt 1
Jefferson, IA, KEFW, RNAV (GPS) RWY 32, Amdt 1
Jefferson, IA, Jefferson Muni, Takeoff Minimums and Obstacle DP, Amdt 4
Mapleton, IA, KMEY, RNAV (GPS) RWY 2, Orig-C
Lewiston, ID, KLWS, RNAV (RNP) Z RWY 12, Orig-B
Cairo, IL, KCIR, NDB RWY 14, Amdt 2C, CANCELLED
Cairo, IL, KCIR, RNAV (GPS) RWY 32, Orig-C
Decatur, IL, KDEC, VOR RWY 36, Amdt 17A
Freeport, IL, KFEP, ILS OR LOC RWY 24, Orig-B
Freeport, IL, KFEP, RNAV (GPS) RWY 24, Amdt 1B
Freeport, IL, KFEP, VOR RWY 24, Amdt 7A, CANCELLED
Peoria, IL, KPIA, ILS OR LOC RWY 4, ILS RWY 4 (SA CAT I), ILS RWY 4 (SA CAT II), Amdt 4
Peoria, IL, KPIA, VOR OR TACAN RWY 13, Amdt 24
Poplar Grove, IL, C77, RNAV (GPS)-A, Orig
Poplar Grove, IL, C77, VOR–A, Orig, CANCELLED
Rochelle, IL, KRPJ, VOR–A, Amdt 8B, CANCELLED
Griffith, IN, Griffith-Merrill Ville, Takeoff Minimums and Obstacle DP, Amdt 4B
Seymour, IN, KSER, RNAV (GPS) RWY 14, Amdt 1A
Warsaw, IN, KASW, ILS OR LOC RWY 27, Amdt 2
Warsaw, IN, KASW, RNAV (GPS) RWY 9, Amdt 1
Warsaw, IN, KASW, RNAV (GPS) RWY 27, Amdt 1
Warsaw, IN, Warsaw Muni, VOR RWY 9, Amdt 6, CANCELLED
Abilene, KS, Abilene Muni, Takeoff Minimums and Obstacle DP, Orig-B
Elkhart, KS, KEHA, RNAV (GPS) RWY 4, Amdt 1C
Elkhart, KS, KEHA, RNAV (GPS) RWY 17, Amdt 1C
Elkhart, KS, KEHA, RNAV (GPS) RWY 22, Amdt 1C
Elkhart, KS, KEHA, RNAV (GPS) RWY 35, Amdt 1D
Mc Pherson, KS, KMPR, VOR RWY 36, Amdt 6C
Neodesha, KS, Neodesha Muni, Takeoff Minimums and Obstacle DP, Orig-A
New Orleans, LA, KMSY, ILS OR LOC RWY 2, Amdt 20
New Orleans, LA, KMSY, RNAV (GPS) RWY 2, Amdt 3
Boston, MA, General Edward Lawrence Logan Intl, Takeoff Minimums and Obstacle DP, Amdt 15
Carrabassett, ME, B21, RNAV (GPS)-A, Amdt 1
Detroit, MI, KYIP, RNAV (GPS) RWY 5L, Amdt 1B, CANCELLED
Detroit, MI, KYIP, RNAV (GPS) RWY 23R, Amdt 1B, CANCELLED
Manistee, MI, KMBL, VOR RWY 10, Amdt 1B, CANCELLED
Detroit Lakes, MN, KDTL, RNAV (GPS) RWY 32, Amdt 2A
Fairmont, MN, KFRM, RNAV (GPS) RWY 31, Orig-B
Marshall, MN, KMML, RNAV (GPS) RWY 30, Orig-C
Caruthersville, MO, M05, VOR/DME RWY 18, Orig-B, CANCELLED
Dexter, MO, KDXE, VOR/DME RWY 36, Amdt 6A, CANCELLED
Houston, MO, Houston Meml, Takeoff Minimums and Obstacle DP, Amdt 1
Kennett, MO, KTKX, VOR/DME RWY 20, Amdt 1A, CANCELLED
Kirksville, MO, KIRK, ILS OR LOC RWY 36, Amdt 1C
Macon, MO, K89, VOR RWY 2, Amdt 2, CANCELLED
Moberly, MO, KMBY, RNAV (GPS) RWY 13, Orig-C
Moberly, MO, KMBY, VOR/DME–A, Amdt 4, CANCELLED
Monroe City, MO, K52, RNAV (GPS) RWY 9, Orig-B
New Madrid, MO, KEIW, VOR/DME–A, Amdt 4A, CANCELLED
Tarkio, MO, K57, RNAV (GPS) RWY 18, Amdt 1
Tarkio, MO, K57, RNAV (GPS) RWY 36, Amdt 1
Tarkio, MO, Gould Peterson Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Hattiesburg-Laurel, MS, KPIB, RNAV (GPS) RWY 18, Amdt 1A
Hamilton, MT, 6S5, RNAV (GPS)-A, Orig-A, CANCELLED
Hamilton, MT, 6S5, RNAV (GPS)-B, Orig-A, CANCELLED
Hardin, MT, 00U, RNAV (GPS) RWY 26, Amdt 1

Elkin, NC, KZEF, NDB–A, Orig, CANCELLED
Kindred, ND, K74, RNAV (GPS) RWY 11, Amdt 1E
Kindred, ND, K74, RNAV (GPS) RWY 29, Amdt 1E
Watford City, ND, Watford City Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Burwell, NE, KBUB, RNAV (GPS) RWY 33, Orig-B
Lincoln, NE, KLNK, ILS Y OR LOC Y RWY 18, Amdt 7C
Lincoln, NE, KLNK, ILS Y OR LOC Y RWY 36, Amdt 11K
Lincoln, NE, KLNK, VOR Y RWY 18, Amdt 13B
Dayton, OH, KDAY, ILS OR LOC RWY 24R, Amdt 10B
Hamilton, OH, KHAO, ILS OR LOC RWY 29, Amdt 2A
Waverly, OH, KEOP, RNAV (GPS) RWY 7, Amdt 1B
Waverly, OH, KEOP, RNAV (GPS) RWY 25, Amdt 1B
Corvallis, OR, KCVO, RNAV (GPS) RWY 17, Amdt 1B
Corvallis, OR, KCVO, RNAV (GPS) RWY 35, Amdt 3A
La Grande, OR, KLGD, NDB–B, Amdt 2
La Grande, OR, La Grande/Union County, Takeoff Minimums and Obstacle DP, Amdt 4
Conway, SC, KHYW, NDB RWY 4, Orig-D
Huron, SD, Huron Rgnl, Takeoff Minimums and Obstacle DP, Amdt 5A
Clarksville, TN, KCKV, RNAV (GPS) RWY 17, Amdt 1B
Dyersburg, TN, Dyersburg Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1A
Dyersburg, TN, KDYR, VOR–A, Amdt 18B, CANCELLED
Memphis, TN, KMEM, RNAV (GPS) Z RWY 18C, Amdt 2C
Memphis, TN, KMEM, RNAV (GPS) Z RWY 18L, Amdt 2E
Memphis, TN, KMEM, RNAV (GPS) Z RWY 18R, Amdt 2G
Comanche, TX, KMKN, RNAV (GPS) RWY 35, Orig-B
Houston, TX, KHOU, RNAV (GPS) RWY 17, Amdt 1B, CANCELLED
Houston, TX, KHOU, RNAV (GPS) RWY 35, Amdt 1C, CANCELLED
Houston, TX, William P Hobby, Takeoff Minimums and Obstacle DP, Amdt 7A
Midland, TX, KMAF, RADAR 1, Amdt 7A, CANCELLED
Van Horn, TX, KVHN, RNAV (GPS) RWY 21, Orig-B
Martinsville, VA, KMTV, RNAV (GPS) RWY 13, Amdt 2A
Highgate, VT, KFSO, RNAV (GPS) RWY 19, Amdt 2
Land O' Lakes, WI, Kings Land O' Lakes, Takeoff Minimums and Obstacle DP, Amdt 5
Wheeling, WV, KHLG, ILS OR LOC RWY 3, Amdt 23A

[FR Doc. 2021–16584 Filed 8–4–21; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4 and 5

[Docket No. RM20–21–000; Order No. 877]

Removing Profile Drawing Requirement for Qualifying Conduit Notices of Intent and Revising Filing Requirements for Major Hydroelectric Projects 10 MW or Less

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final rule.

SUMMARY: In this final rule, the Federal Energy Regulatory Commission (Commission) is amending its regulations governing the filing requirements for qualifying conduits and certain major hydroelectric power projects. Specifically, the Commission is removing the requirement that a notice of intent to construct a qualifying conduit include a profile drawing showing the source of the hydroelectric potential in instances where a dam would be constructed in association with the facility and extending the licensing requirements that currently apply to major projects up to 5 megawatts (MW) to major projects 10 MW or less, consistent with the amended definition of a small hydroelectric power project in the Hydropower Regulatory Efficiency Act of 2013.

DATES: This rule is effective October 4, 2021.

FOR FURTHER INFORMATION CONTACT: Heather Campbell (Technical Information), Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6182, *heather.e.campbell@ferc.gov.*

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SUPPLEMENTARY INFORMATION:

I. Background

1. By this final rule, the Federal Energy Regulatory Commission (Commission or FERC) is amending parts 4 and 5 of its regulations governing the filing requirements for qualifying conduits and certain major hydroelectric power projects. The Commission, under Part I of the Federal Power Act (FPA), licenses hydropower projects that are developed by non-Federal entities including individuals, private entities, states, municipalities, electric cooperatives, and others.

2. The Hydropower Regulatory Efficiency Act of 2013 (2013 HREA) [1] was signed into law on August 9, 2013. As explained below, changes implemented in response to the 2013 HREA form the basis for these revisions to the Commission's regulations.

II. Notice of Proposed Rulemaking

3. On February 18, 2021, the Commission issued a notice of proposed rulemaking (NOPR) proposing to: (1) Remove the requirement that a notice of intent to construct a qualifying conduit include a profile drawing showing the source of the hydroelectric potential in instances where a dam would be constructed in association with the facility; and (2) extend the licensing requirements that currently apply to major projects up to 5 megawatts (MW) to major projects 10 MW or less, consistent with the amended definition of a small hydroelectric power project in the 2013 HREA.[2] The Commission did not receive any comments in response to the NOPR. The proposal set forth in the NOPR and the Commission's determination are discussed below.

III. Discussion

A. Qualifying Conduits

4. The NOPR explained that the 2013 HREA amended section 30 of the FPA to create a subset of small conduit facilities that are categorically excluded from the licensing and exemption requirements of the FPA. In 2014, the Commission issued Order No. 800, which became effective February 23, 2015, defining a ''qualifying conduit hydropower facility'' at § 4.30(b)(26) of its regulations.[3] Subsequently, section 30 of the FPA was amended by the

[1] Public Law 113–23, 127 Stat. 493 (2013).

[2] *Removing Profile Drawing Requirement for Qualifying Conduit Notices of Intent and Revising Filing Requirements for Major Hydroelectric Projects 10 MW or Less,* 86 FR 13506 (Mar. 9, 2021), 174 FERC ¶ 61,105 (2021).

[3] *See Revisions and Technical Corrections to Conform the Commission's Regulations to the Hydropower Regulatory Efficiency Act of 2013,* Order No. 800, 79 FR 59105 (Oct. 1, 2014), 148 FERC ¶ 61,197 (2014).

America's Water Infrastructure Act of 2018.[4]

5. In accordance with section 30(a)(2)(A),[5] any person, State, or municipality proposing to construct a ''qualifying conduit hydropower facility'' must file a notice of intent demonstrating the facility meets the following ''qualifying criteria'':[6]

- Be located on and use only the hydroelectric potential of a non-federally owned conduit;
- have a proposed installed capacity that does not exceed 40 MW;[7] and
- be proposed for construction and, as of the date of enactment of the 2013 HREA, not be licensed under, or exempted from, the licensing requirements of Part I of the FPA.

6. Under the 2013 HREA, as amended,[8] the Commission is required to determine whether proposed projects meet the criteria to be considered qualifying conduit hydropower facilities. Qualifying conduit hydropower facilities are not required to be licensed or exempted by the Commission; however, the entity proposing to construct a facility that meets the criteria must file a Notice of Intent to Construct a Qualifying Conduit Hydropower Facility (NOI) with the Commission that demonstrates the facility meets the qualifying criteria discussed above.

7. The NOI must contain: An introductory statement; a statement that the proposed project will use the hydroelectric potential of a non-federally owned conduit; a statement that the proposed facility has not been licensed or exempted on or before August 9, 2013; a description of the facility proposal; project drawings; the preliminary permit project number of the proposed facility, if applicable; and verification in a sworn notarized statement or an unsworn statement.[9] Specifically with respect to the project drawings, the NOI must include a plan (or overhead view); a location map showing the facilities and their relationship to the nearest town; and if a dam would be constructed in association with the facility, a profile drawing showing that the conduit, and not the dam, creates the hydroelectric potential.[10]

8. On June 18, 2015, in *Soldier Canyon Filter Plant,*[11] the Commission stated:

> In determining whether a proposed qualifying conduit hydropower facility meets the requirement of FPA section 30(a) that it use ''only the hydroelectric potential of a non-federally owned conduit'' and (if it meets the other section 30(a) requirements) is thus excluded from the licensing requirements of the FPA, we see no reason to apply a different, more stringent standard than was established in 1980 for small conduit facility exemptions. We view small conduit facilities and qualifying conduits as simply generating hydroelectricity by using the water within a conduit operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity. Whether, or in what proportion, the conduit's ability to generate hydropower is due to the conduit's gradient or the head from an upstream dam is not relevant.[12]

This holding indicates that the profile drawings are no longer relevant and should not be required as part of the NOI submittal. Consequently, the Commission proposed to amend its regulations to remove this requirement.

B. Major Projects Greater Than 5 MW and up to and Including 10 MW

9. Section 405 of the Public Utility Regulatory Policies Act of 1978 (PURPA)[13] provided that certain hydropower projects that produce 5,000 kilowatts, or 5 MW, or less of power were exempted from the licensing requirements of Part 1 of the FPA.

10. In 1981, the Commission adopted the 5–MW demarcation for certain major hydroelectric projects required to be licensed under Part 1 of the FPA to parallel PURPA's 5–MW demarcation regarding exemptions.[14] Part 4 of the Commission's regulations includes three relevant licensing subparts: (1) Subpart E—Application for License for Major Unconstructed Project and Major Modified Project (see 18 CFR 4.40); (2) Subpart F—Application for License for Major Project—Existing Dam (see 18 CFR 4.50); and (3) Subpart G—Application for License for Minor Water Power Projects and Major Water Power Projects 5 MW or Less (see 18 CFR 4.60; 4.61).[15] Subparts E and F apply to projects greater than 5 MW, and include additional filing requirements beyond subpart G, which applies to projects less than or equal to 5 MW.

11. Likewise, part 4 of Commission's regulations include two subparts that rely on the same 5–MW limit to determine minimum filing requirements for an application for license solely for transmission lines that transmit power from a licensed water power projects as well amendments to licensed water power projects: (1) Subpart H—Application for License for Transmission Line Only (see 18 CFR 4.71); and (2) Subpart L—Application for Amendment of License (see 18 CFR 4.201), respectively.

12. Part 5 of the Commission's regulations rely on the 5–MW limit to determine minimum filing requirements for applications for license for water power projects filed and processed using the integrated licensing process (see 18 CFR 5.18).

13. The 2013 HREA amended section 405 to increase the limit for exemptions to 10,000 kilowatts, or 10 MW, with the goal of facilitating the speed at which such hydropower projects could be built. Order 800 amended the Commission's regulations to reflect the 10–MW limit.[16]

14. As a result of these changes, the Commission's limit for license application provisions no longer parallels the limit for exemptions. We stated in the NOPR that we continue to believe that a parallel demarcation is appropriate to ''expedite hydropower development by easing the burden of preparing an application for license and by assisting the Commission in more rapid processing of applications.''[17]

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[4] Public Law 115–270, 132 Stat. 3765 (2018).

[5] 16 U.S.C. 823a(a)(2)(A).

[6] *Id.* 823a(a)(3)(C). The qualifying conduit hydropower facility must also meet the requirements for a small conduit facility as defined in section 30(a)(3)(A) of the FPA. *Id.* 823a(a)(3)(A).

[7] The 2013 HREA required that qualifying conduit hydropower facilities not exceed 5 MW. This limit was revised to 40 MW at section 3002(2) in the America's Water Infrastructure Act of 2018 (codified at 16 U.S.C. 823a(a)(3)(C)(ii)).

[8] Public Law 115–270, 132 Stat. 3765.

[9] 18 CFR 4.401.

[10] *Id.* § 4.401(f).

[11] 151 FERC ¶ 61,228 (2015).

[12] *Id.* P 13.

[13] 16 U.S.C. 2705.

[14] *Regulations Governing Applications for License for Major Unconstructed Projects and Major Modified Projects; Applications for License for Transmission Line Only and Applications for Amendment to License,* Order No. 184, 46 FR 55926 (Nov. 13, 1981), FERC Stats. & Regs. ¶ 30,308 (1981) (cross-referenced at 17 FERC ¶ 61,122); *Regulations Governing Applications for License for Minor Water Power Projects and Major Water Power Projects 5 Megawatts or Less,* Order No. 185, 46 FR 55944 (Nov. 13, 1981), FERC Stats. & Regs. ¶ 30,309 (1981) (cross-referenced at 17 FERC ¶ 61,121).

[15] The Commission has maintained a distinction between major and minor projects based on section 10(i) of the FPA. However, the license application procedures set forth in § 4.61 of the Commission's regulations apply to both minor projects and major projects less than 5 MW (with the exception of Exhibit E for unconstructed projects). These revisions do not affect minor projects.

[16] *See Revisions and Technical Corrections to Conform the Commission's Regulations to the Hydropower Regulatory Efficiency Act of 2013,* Order No. 800, 148 FERC ¶ 61,197 (2014).

[17] *Applications for License for Minor Water Power Projects and Major Water Power Projects 5 Megawatts or Less,* 46 FR 9637 (Jan. 29, 1981), FERC Stats. & Regs. ¶ 32,106 (1981) (cross-referenced at 14 FERC ¶ 61,042).

Moreover, the 5–MW limit in the Commission's regulations could be burdensome to projects greater than 5 MW and up to and including 10 MW, in terms of the cost and time associated with the additional filing requirements of subparts E and F.

15. Therefore, the Commission proposed to amend parts 4 and 5 of its regulations to extend the licensing and amendment filing requirements that currently apply to major projects up to 5 MW to major projects 10 MW or less, consistent with the amended definition of a small hydroelectric power project in the 2013 HREA.[18]

C. Commission Determination

16. For the reasons discussed above, the Commission adopts the NOPR's proposal to: (1) Remove the requirement that an NOI include a profile drawing showing the source of the hydroelectric potential in instances where a dam would be constructed in association with the facility; and (2) extend the licensing requirements that currently apply to major projects up to 5 MW to major projects 10 MW or less.

IV. Regulatory Requirements

A. Information Collection Statement

17. The Paperwork Reduction Act[19] requires each Federal agency to seek and obtain the Office of Management and Budget's (OMB) approval before undertaking a collection of information directed to 10 or more persons or contained in a rule of general applicability. OMB regulations require approval of certain information collection requirements contained in final rules published in the **Federal Register**.[20] Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to the collection of information unless the collection of information displays a valid OMB control number.

18. *Public Reporting Burden:* By revising regulations governing the filing requirements for qualifying conduits and for major hydroelectric power projects greater than 5 MW and up to and including 10 MW, this final rule will modify certain reporting and recordkeeping requirements included in FERC–500 (OMB Control No 1902–0058)[21] and FERC–505 (OMB Control No. 1902–0115).[22]

19. These revisions to the Commission's regulations will align the filing requirements for qualifying conduits with Commission precedent and align the filing requirements for major projects greater than 5 MW and up to and including 10 MW to be consistent with the amended definition of a small hydroelectric power project in the 2013 HREA. Both revisions represent a slight decrease in the reporting requirements and burden information for FERC–500 and FERC–505.

20. The estimated burden and cost for the requirements affected by this final rule follow.

CHANGES DUE TO THE FINAL RULE IN DOCKET NO. RM20–21–000

	Numbers of respondents	Numbers of responses[23] per respondent	Total number of responses	Avg. burden hrs. & cost per response[24]	Total annual burden hours & total annual cost
	(1)	(2)	(1) × (2) = (3)	(4)	(3) × (4) = 5
FERC–500	3	1	3	320 hours/$26,560 reduction.	960 hours/$79,680 reduction.
FERC–505	8	1	8	10 hours/$830 reduction.	80 hours/$6,640 reduction.
Total	.....	.....	11	.....	1,040 hours/$86,320 reduction.

21. *Titles:* FERC–500 (Application for License/Relicense for Water Projects with More than 5 Megawatt (MW) Capacity) and FERC–505 (Small Hydropower Projects and Conduit Facilities including License/Relicense, Exemption, and Qualifying Conduit Facility Determination).

22. *Action:* Revisions to information collections FERC–500 and FERC–505.

23. *OMB Control Nos.:* 1902–0058 (FERC–500) and 1902–0115 (FERC–505).

24. *Respondents:* Municipalities, businesses, private citizens, and for-profit and not-for-profit institutions.

25. *Frequency of Information:* Ongoing.

26. *Necessity of Information:* The revised regulations remove the Commission's requirement for notices of intent to construct a qualifying conduit to include a profile drawing, consistent with Commission precedent, and align the Commission's filing requirements for major projects greater than 5 MW and up to and including 10 MW to be consistent with the amended definition of a small hydroelectric power project in the 2013 HREA. The revised regulations affect only the number of entities that would file applications with the Commission for these two project types and reduce information collection requirements.

27. *Internal Review:* The Commission has reviewed the revisions and has determined that they are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has assured

[18] Section 4.32(a)(5)(ii), which contains a cross-reference to § 4.61, will also be revised.

[19] 44 U.S.C. 3501–3521.

[20] *See* 5 CFR 1320.12.

[21] FERC–500 includes the reporting and recordkeeping requirements for ''Application for License/Relicense for Water Projects with More than 5 Megawatt (MW) Capacity.''

[22] FERC–505 includes the reporting and recordkeeping requirements for ''Small Hydropower Projects and Conduit Facilities including License/Relicense, Exemption, and Qualifying Conduit Facility Determination.''

[23] We consider the filing of an application or notice of intent to be a ''response.''

[24] Commission staff estimates that the industry's skill set and cost (for wages and benefits) for FERC–500 and FERC–505 are approximately the same as the Commission's average cost. The FERC 2020 average salary plus benefits for one FERC full-time equivalent (FTE) is $172,329/year (or $83.00/hour).

itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information collection requirements.

28. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission at one of the following methods:

- *USPS at:* Federal Energy Regulatory Commission, Ellen Brown, Office of the Executive Director, 888 First Street NE, Washington, DC 20426.
- *Hard copy communication other than USPS:* Federal Energy Regulatory Commission, Ellen Brown, Office of the Executive Director, 12225 Wilkins Avenue, Rockville, Maryland 20852.
- *email to: DataClearance@ferc.gov.*
- *phone:* (202) 502–8663, or by fax: (202) 273–0873.

29. Please send comments concerning the collection of information and the associated burden estimates to: Office of Information and Regulatory Affairs, Office of Management and Budget [Attention: Federal Energy Regulatory Commission Desk Officer]. Due to security concerns, comments should be sent directly to *www.reginfo.gov/public/do/PRAMain.* Comments submitted to OMB should be sent within 30 days of publication of this notification in the **Federal Register** and should refer to FERC–500 (OMB Control No 1902–0058) and FERC–505 (OMB Control No. 1902–0115).

B. Environmental Analysis

30. The Commission is required to prepare an Environmental Assessment or an Environmental Impact statement for any action that may have a significant effect on the human environment.[25] Excluded from this requirement are rules that are clarifying, corrective, or procedural, or that do not substantially change the effect of legislation or the regulations being amended.[26] This final rule revises the filing requirements for qualifying conduit projects and the filing requirements for license applications for major hydroelectric projects with an installed capacity of 10 MW or less. Because this final rule is procedural and does not substantially change the effect of the regulations being amended, preparation of an Environmental Assessment or Environmental Impact Statement is not required.

C. Regulatory Flexibility Act

31. The Regulatory Flexibility Act of 1980 (RFA)[27] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a rulemaking and minimize any significant economic impact on a substantial number of small entities.[28] In lieu of preparing a regulatory flexibility analysis, an agency may certify that a final rule will not have a significant economic impact on a substantial number of small entities.[29]

32. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[30] The SBA size standard for electric utilities is based on the number of employees, including affiliates.[31] Under SBA's current size standards, a hydroelectric power generator (NAICS code 221111)[32] is small if, including its affiliates, it employs 500 or fewer people.[33] The Commission, however, currently does not require information regarding the number of individuals employed by hydroelectric generators to administer Part 1 of the Federal Power Act and therefore is unable to estimate the number of small entities under the SBA definition. Regardless, the Commission anticipates that this final rule will affect few entities.

33. As noted earlier, the final rule will only affect entities filing notices of intent to construct a qualifying conduit in instances where a dam would be constructed in association with the facility and entities filing licensing or amendment applications for major hydroelectric projects with an installed capacity of greater than 5 MW and up to and including 10 MW. From 2013 to 2020, the Commission received approximately 140 total notices to construct qualifying conduits and 18 applicable licensing applications. The revisions will eliminate the filing requirement for profile drawings and reduce the filing requirements for major hydroelectric projects with an installed capacity greater than 5 MW and up to and including 10 MW, thus reducing the burden on small hydro developers going forward.

34. Accordingly, pursuant to section 605(b) of the RFA, the Commission certifies that this final rule would not have a significant economic impact on a substantial number of small entities.

D. Document Availability

35. 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*). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the March 13, 2020 proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19).

36. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

37. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

E. Effective Date and Congressional Notification

38. These regulations are effective October 4, 2021. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule is being submitted to the Senate, House, Government Accountability Office, and Small Business Administration.

List of Subjects in 18 CFR Parts 4 and 5

Administrative practice and procedure, Electric power, Reporting and recordkeeping requirements.

By direction of the Commission.

[25] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

[26] 18 CFR 380.4(a)(2)(ii).

[27] 5 U.S.C. 601–612.

[28] *Id.* 603(c).

[29] *Id.* 605(b).

[30] 13 CFR 121.101.

[31] *Id.* § 121.201.

[32] The North American Industry Classification System (NAICS) is an industry classification system that Federal statistical agencies use to categorize businesses for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. economy. United States Census Bureau, *North American Industry Classification System, https://www.census.gov/eos/www/naics/.*

[33] 13 CFR 121.201 (Sector 22—Utilities).

Issued: July 15, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

In consideration of the foregoing, the Commission amends parts 4 and 5, chapter I, title 18, *Code of Federal Regulations,* as follows:

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

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

Authority: 16 U.S.C. 791a–825r; 42 U.S.C. 7101–7352.

■ 2. In § 4.32, revise paragraph (a)(5)(ii) to read as follows:

§ 4.32 Acceptance for filing or rejection; information to be made available to the public; requests for additional studies.

(a) * * *

(5) * * *

(ii) License for a minor water power project and a major water power project 10 MW or less: § 4.61;

* * * * *

■ 3. In § 4.40, revise paragraph (a) to read as follows:

§ 4.40 Applicability.

(a) *Applicability.* The provisions of this subpart apply to any application for an initial license for a major unconstructed project that would have a total installed capacity of more than 10 megawatts, and any application for an initial or new license for a major modified project with a total installed capacity more than 10 megawatts. An applicant for license for any major unconstructed or major modified water power project that would have a total installed generating capacity of 10 megawatts or less must submit application under subpart G of this part (§§ 4.60 and 4.61).

* * * * *

■ 4. In § 4.50, revise paragraphs (a)(1) and (3) to read as follows:

§ 4.50 Applicability.

(a) * * *

(1) Except as provided in paragraph (a)(2) of this section, the provisions of this subpart apply to any application for either an initial license or new license for a major project—existing dam that is proposed to have a total installed capacity of more than 10 megawatts.

* * * * *

(3) An applicant for license for any major project—existing dam that would have a total installed capacity of 10 megawatts or less must submit application under subpart G of this part (§§ 4.60 and 4.61).

* * * * *

■ 5. Revise the heading to subpart G to read as follows:

Subpart G—Application for License for Minor Water Power Projects and Major Water Power Projects 10 Megawatts or Less

■ 6. In § 4.60, revise paragraphs (a)(2) and (3) and (b) to read as follows:

§ 4.60 Applicability and notice to agencies.

(a) * * *

(2) Any major project—existing dam, as defined in § 4.30(b)(16), that has a total installed capacity of 10 MW or less; or

(3) Any major unconstructed project or major modified project, as defined in § 4.30(b)(15) and (14) respectively, that has a total installed capacity of 10 MW or less.

(b) *Notice to agencies.* The Commission will supply interested Federal, state, and local agencies with notice of any application for license for a water power project 10 MW or less and request comment on the application. Copies of the application will be available for inspection at the Commission's Public Reference Room. The applicant shall also furnish copies of the filed application to any Federal, state, or local agency that so requests.

* * * * *

■ 7. In § 4.61, revise paragraphs (a)(3), (b) introductory text, (d)(1) introductory text, and (d)(2) introductory text to read as follows:

§ 4.61 Contents of application.

(a) * * *

(3) Each application for a license for a water power project 10 megawatts or less must include the information requested in the initial statement and lettered exhibits described by paragraphs (b) through (f) of this section, and must be provided in the form specified. The Commission reserves the right to require additional information, or another filing procedure, if data provided indicate such action to be appropriate.

(b) * * *

Before the Federal Energy Regulatory Commission

Application for License for a [Minor Water Power Project, or Major Water Power Project, 10 Megawatts or Less, as Appropriate]

* * * * *

(d) * * *

(1) *For major unconstructed and major modified projects 10 MW or less.* Any application must contain an Exhibit E conforming with the data and consultation requirements of § 4.41(f), if the application is for license for a water power project which has or is proposed to have a total installed generating capacity greater than 1.5 MW but not greater than 10 MW, and which:

* * * * *

(2) *For minor projects and major projects at existing dams 10 MW or less.* An application for license for either a minor water power project with a total proposed installed generating capacity of 1.5 MW or less or a major project—existing dam with a proposed total installed capacity of 10 MW or less must contain an Exhibit E under this paragraph (d)(2). *See* § 4.38 for consultation requirements. The Environmental Report must contain the following information:

* * * * *

■ 8. In § 4.71, revise paragraphs (b)(1) and (2) to read as follows:

§ 4.71 Contents of application.

* * * * *

(b) * * *

(1) For any transmission line that, at the time the application is filed, is not constructed and is proposed to be connected to a licensed water power project with an installed generating capacity of more than 10 MW—Exhibits A, B, C, D, E, F, and G under § 4.41;

(2) For any transmission line that, at the time the application is filed, is not constructed and is proposed to be connected to a licensed water power project with an installed generating capacity of 10 MW or less—Exhibits E, F, and G under § 4.61; and

* * * * *

■ 9. In § 4.201, revise paragraphs (b)(1) and (3) through (5) to read as follows:

§ 4.201 Contents of application.

* * * * *

(b) * * *

(1) For amendment of a license for a water power project that, at the time the application is filed, is not constructed and is proposed to have a total installed generating capacity of more than 10 MW—Exhibits A, B, C, D, E, F, and G under § 4.41;

* * * * *

(3) For amendment of a license for a water power project that, at the time the application is filed, is not constructed and is proposed to have a total installed generating capacity of 10 MW or less, but more than 1.5 MW—Exhibits F and G under § 4.61, and Exhibit E under § 4.41;

(4) For amendment of a license for a water power project that, at the time the

application for amendment is filed, has been constructed, and is proposed to have a total installed generating capacity of 10 MW or less—Exhibit E, F, and G under § 4.61; and

(5) For amendment of a license for a water power project that, at the time the application is filed, has been constructed and is proposed to have a total installed generating capacity of more than 10 MW—Exhibits A, B, C, D, E, F, and G under § 4.51.

* * * * *

§ 4.401 [Amended]

■ 10. In § 4.401, remove paragraph (f)(3).

PART 5—INTEGRATED LICENSE APPLICATION PROCESS

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

Authority: 16 U.S.C. 792–828c, 2601–2645; 42 U.S.C. 7101–7352.

■ 12. In § 5.18, revise paragraph (a)(5)(i) to read as follows:

§ 5.18 Application content.

(a) * * *

(5) * * *

(i) License for a minor water power project and a major water power project 10 MW or less: § 4.61 of this chapter (General instructions, initial statement, and Exhibits A, F, and G);

* * * * *

[FR Doc. 2021–15511 Filed 8–4–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9889]

RIN 1545–BO4

Investing in Qualified Opportunity Funds; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations; correction.

SUMMARY: This document contains corrections to Treasury Decision 9889, which was published in the **Federal Register** on Monday, January 13, 2020. Treasury Decision 9889 contained final regulations under the Internal Revenue Code (Code) that govern the extent to which taxpayers may elect the Federal income tax benefits with respect to certain equity interests in a qualified opportunity fund (QOF).

DATES: These corrections are effective on August 5, 2021 and applicable on or after January 13, 2020.

FOR FURTHER INFORMATION CONTACT: Concerning section 1400Z–2 and these regulations generally, Harith J. Razaa, (202) 317–7006, or Kyle C. Griffin, (202) 317–4718, of the Office of Associate Chief Counsel (Income Tax and Accounting). These numbers are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9889) that are the subject of this correction are under section 1400Z–2 of the Code.

Need for Correction

As published on January 13, 2020 (85 FR 1866) the final regulations (TD 9889) contain errors that need to be corrected.

Correction of Publication

Accordingly, the final regulations (TD 9889) that are the subject of FR Doc. 2019–27846, appearing on page 1866 in the **Federal Register** of January 13, 2020, are corrected as follows:

1. On page 1897, second and third columns, removing the fourth through the sixth sentences of the last paragraph.

2. On page 1923, first column, the first full paragraph is corrected to read: ''As set forth in the final regulations, the 62-month working capital safe harbor provides that, during the maximum 62-month covered period, (1) NQFP in excess of the five-percent NQFP limitation will not cause a trade or business to fail to qualify as a qualified opportunity zone business, and (2) gross income earned from the trade or business will be counted towards satisfying the 50-percent gross income requirement (each of clauses (1) and (2) function in a manner similar to the 31-month working capital safe harbor). In addition, the regulations provide additional flexibility for entities utilizing the working capital safe harbor. First, for start-up entities, the 62-month working capital safe harbor provides that, during the maximum 62-month covered period, if property of an entity that would otherwise be NQFP is treated as being a reasonable amount of working capital under the safe harbor, the entity satisfies the requirements of section 1400Z–2(d)(3)(A)(i) only during the working capital safe harbor period(s) with regard to such property. However, the final regulations make clear that such property is not and will never be qualified opportunity zone business property for any purpose. Second, for any eligible entity utilizing the working capital safe harbor, if tangible property is expected to be qualified opportunity zone business property pursuant to the written plan, such tangible property is treated as qualified opportunity zone business during the working capital safe harbor test for purposes of section 1400Z–2(d)(3). Under the 62-month working capital safe harbor, intangible property purchased or licensed with working capital covered by the safe harbor, and pursuant to the plan submitted with respect to that safe harbor, will count towards the satisfaction of the 40-percent intangible property use test.''

3. On page 1926, third column, the second sentence of the first full paragraph, the language ''In general, the final regulations permit a qualified opportunity zone business to treat tangible property for which working capital covered by the 31-month working capital safe harbor is expended as (i) used in the trade or business of the qualified opportunity zone business, and (ii) qualified opportunity zone business property throughout the period during which such working capital is covered by the safe harbor.'' is corrected to read ''In general, the 62-month working capital safe harbor under the final regulations provides that, during the maximum 62-month covered period, if property of a start-up entity that would otherwise be NQFP is treated as being a reasonable amount of working capital under the safe harbor, the start-up entity satisfies the requirements of section 1400Z–2(d)(3)(A)(i) only during the working capital safe harbor period(s) with regard to such property. However, the final regulations make clear that such property is not qualified opportunity zone business property for any other purpose. See part V.N.3.c of this Summary of Comments and Explanation of Revisions describing the 62-month working capital safe harbor set forth in § 1.1400Z2(d)–1(d)(3)(vi).''.

4. On page 1926, third column, the first through the sixth line from the bottom of the first full paragraph, the language ''capital covered by the 31-month working capital safe harbor are not, following the conclusion of the final safe harbor period, treated as tangible property for purposes of applying the 70-percent tangible property standard.'' is corrected to read ''capital covered by the 62-month working capital safe harbor are not, following the conclusion of the final safe harbor period, treated as qualified opportunity zone business property for purposes of applying the 70-percent tangible property standard. Because working capital is not tangible property, working capital covered by the 62-month safe harbor cannot be treated as qualified opportunity zone business

property under the proposed regulations or the final regulations except as provided in section 1.1400Z2(d)–1(d)(3)(vi)(D).''.

Oluwafunmilayo P. Taylor,

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

[FR Doc. 2021–16664 Filed 8–4–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9889]

RIN 1545–BO4

Investing in Qualified Opportunity Funds; Correcting Amendment

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to Treasury Decision 9889, which was published in the **Federal Register** on Monday, January 13, 2020. Treasury Decision 9889 contained final regulations under the Internal Revenue Code (Code) that govern the extent to which taxpayers may elect the Federal income tax benefits with respect to certain equity interests in a qualified opportunity fund (QOF).

DATES: These corrections are effective on August 5, 2021 and applicable on or after January 13, 2020.

FOR FURTHER INFORMATION CONTACT: Concerning section 1400Z–2 and these regulations generally, Harith J. Razaa, (202) 317–7006, or Kyle C. Griffin, (202) 317–4718, of the Office of Associate Chief Counsel (Income Tax and Accounting). These numbers are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9889) that are the subject of this correction are under section 1400Z–2 of the Code.

Need for Correction

As published on January 13, 2020 (85 FR 19082) the final regulations (TD 9889) contain errors that need to be corrected.

List of Subjects in 26 CFR Part 1

Income Taxes, Reporting and recordkeeping requirements.

Correction of Publication

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

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.1400Z2(d)–1 is amended by revising paragraphs (a)(3) and (d)(3)(vi)(D) to read as follows:

§ 1.1400Z2(d)–1 Qualified opportunity funds and qualified opportunity zone businesses.

* * * * *

(a) * * *

(3) *Self decertification of a QOF.* If a QOF chooses to decertify as a QOF, the self-decertification must be effected in such form and manner as may be prescribed by the Commissioner in IRS forms or instructions or in publications or guidance published in the Internal Revenue Bulletin (see §§ 601.601(d)(2) and 601.602 of this chapter.)

* * * * *

(d) * * *

(3) * * *

(vi) * * *

(D) *Safe harbor for working capital and property on which working capital is being expended—(1) Working capital for start-up businesses.* For start-up businesses utilizing the working capital safe harbor, if paragraph (d)(3)(v) of this section treats property of an entity that would otherwise be nonqualified financial property as being a reasonable amount of working capital because of compliance with the three requirements of paragraphs (d)(3)(v)(A) through (C) of this section, the entity satisfies the requirements of section 1400Z–2(d)(3)(A)(i) only during the working capital safe harbor period(s) for which the requirements of paragraphs (d)(3)(v)(A) through (C) of this section are satisfied; however such property is not qualified opportunity zone business property for any purpose.

(*2*) *Tangible property acquired with covered working capital.* For any eligible entity, if tangible property referred to in paragraph (d)(3)(v)(A) is expected to satisfy the requirements of section 1400Z–2(d)(2)(D)(i) as a result of the planned expenditure of working capital described in paragraph (d)(3)(v)(A), and is purchased, leased, or improved by the trade or business, pursuant to the written plan for the expenditure of the working capital, then the tangible property is treated as qualified opportunity zone business property satisfying the requirements of section 1400Z–2(d)(2)(D)(i), during that and subsequent working capital periods the property is subject to, for purposes of the *70-percent tangible property standard* in section 1400Z–2(d)(3).

* * * * *

Oluwafunmilayo P. Taylor,

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

[FR Doc. 2021–16663 Filed 8–4–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0574]

RIN 1625–AA00

Safety Zone; Flagship League Mariners Ball Fireworks; Presque Isle Bay; Erie, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters in Presque Isle bay in Erie, PA. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by a fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Buffalo or a designated representative.

DATES: This rule is effective August 20, 2021, from 8:50 p.m. through 10 p.m.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0574 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST2 Anthony Urbana, U.S. Coast Guard Sector Buffalo via telephone 716–843–9342 or email *D09-SMB-SECBuffalo-WWM@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 Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking with respect to this rule because the event sponsor did not submit notice of the fireworks display to the Coast Guard with sufficient time remaining before the event to publish an NPRM. Delaying the effective date of this rule to wait for a comment period to run would be impracticable and contrary to the public interest by inhibiting the Coast Guard's ability to protect spectators and vessels from the hazards associated with this fireworks display.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for a 30-day notice period to run would be impracticable and contrary to the public interest.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port (COTP) Buffalo has determined that fireworks over the water presents significant risks to public safety and property. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the fireworks display is taking place.

IV. Discussion of the Rule

This rule establishes a safety zone from 8:50 p.m. through 10 p.m. on August 20, 2021. The safety zone will cover all navigable waters within a 840-feet radius of barge launched fireworks in Presque Isle bay in Erie, PA. The duration of the zone is intended to protect spectators, vessels, and the marine environment in these navigable waters during the fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP Buffalo 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 (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. The safety zone will encompass a 840-feet radius of barge launched fireworks in Presque Isle bay in Erie, PA. lasting approxiamately 1 hour during the evening when vessel traffic is normally low. Moreover, the Coast Guard would 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 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. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

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 1 hour that will prohibit entry within a 840-feet radius in Presque Isle bay in Erie, PA. for a fireworks display. 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.T09–0574 to read as follows:

§ 165.T09–0574 Safety Zone; Flagship League Mariners Ball Fireworks; Presque Isle Bay; Erie, PA.

(a) *Location.* The following area is a safety zone: All waters of the Presque Isle Bay, from surface to bottom, encompassed by a 840-feet radius around 42°07′16.70″ N, 080°07′59.34″ W.

(b) *Definitions.* As used in this section, *designated 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 designated by or assisting the Captain of the Port Buffalo (COTP) 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 Buffalo or a designated representative.

(2) Vessel operators desiring to enter or operate within the safety zone must contact the COTP Buffalo or her designated representative to obtain permission to do so. The COTP Buffalo or her designated representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP Buffalo, or her designated representative.

(d) *Enforcement period.* The regulated area described in paragraph (a) is effective from 8:50 p.m. through 10 p.m. on August 20, 2021.

Dated: July 30, 2021.

L.M. Littlejohn,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 2021–16707 Filed 8–4–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED–2021–OSERS–0018]

Final Priority—Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities and Technical Assistance on State Data Collection—National Assessment Center

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final priority.

SUMMARY: The Department of Education (Department) announces a priority for the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities and Technical Assistance on State Data Collection program, Assistance Listing Number 84.326G. The Department may use the priority for competitions in fiscal year (FY) 2021 and later years. We will use the priority to award a cooperative agreement for a National Assessment Center (Center) to focus attention on an identified need to address national, State, and local assessment issues related to students with disabilities, including students with disabilities who are also English learners (ELs).

DATES: Effective September 7, 2021.

FOR FURTHER INFORMATION CONTACT: David Egnor, U.S. Department of Education, 400 Maryland Avenue SW, Room 5163, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–7334 or (202) 856–6409. Email: *david.egnor@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Purpose of Programs: The purpose of the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program is to promote academic achievement and to improve results for children with disabilities by providing technical assistance (TA), supporting model demonstration projects, disseminating useful information, and implementing activities that are supported by scientifically based research. The purpose of the Technical Assistance on State Data Collection program is to improve the capacity of States to meet the Individuals with Disabilities Education Act (IDEA) data collection and reporting requirements. In addition, the Consolidated Appropriations Act, 2021, gives the Secretary authority to use funds reserved under section 611(c) of the IDEA to administer and carry out other services and activities to improve data collection, coordination, quality, and use under Parts B and C of the IDEA.

Program Authority: 20 U.S.C. 1411, 1416, 1463, and 1481; and the Consolidated Appropriations Act, 2021, Div. H, Title III of Public Law 116–260, 134 Stat. 1182.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Program Regulations: 34 CFR 300.702.

We published a notice of proposed priorities (NPP) for this program in the **Federal Register** on March 25, 2021 (86 FR 15830). That document contained background information and our reasons for proposing the particular priorities.

Under section 681 of the IDEA, the Secretary may give priority to the activities listed in section 681(d) without regard to the rulemaking procedures in section 553 of the Administrative Procedure Act (APA). The activities required to be conducted under Proposed Priority 1 are activities listed in section 681(d), whereas the activities required to be conducted under Proposed Priority 2 include activities that are outside the exemption from rulemaking under IDEA section 681(d). As a result, pursuant to the notice and comment rulemaking requirements of section 553 of the APA, in the NPP, the Department specifically invited comments regarding Proposed Priority 2, including: (1) The program requirements under Proposed Priority 2; and (2) the application and administrative requirements under the common elements section of Proposed Priority 1 and Proposed Priority 2, but only as the requirements apply to Proposed Priority 2. We appreciate commenters' input on Proposed Priority 1. For the purposes of this notice of final priority (NFP), we address only the comments on Proposed Priority 2, including the associated application and administrative requirements.

We make substantive changes to Proposed Priority 2 by adding a focus on increasing the capacity of parents of students with disabilities to understand the statutory and regulatory bases for, and benefits of, including all students with disabilities in State and districtwide assessments and other assessments used for educational programming and instructional purposes. These substantive changes impact how Proposed Priority 2 focuses attention on the important role that parents play in addressing an identified need to address national, State, and local assessment issues related to students with disabilities, including students with disabilities who are also English learners (ELs).

There are also editorial differences between Proposed Priority 2 and its requirements and the final priority and requirements. In this NFP, we refer to Proposed Priority 2 as the priority, and to the Proposed Priority 2 application and administrative requirements common to Proposed Priority 1 and 2, as the requirements.

Public Comment: In response to our invitation in the NPP, eight parties submitted comments on the priority and requirements.

Generally, we do not address technical and other minor changes, or suggested changes the law does not authorize us to make under the applicable statutory authority. In addition, we do not address general comments that raised concerns not directly related to the priority or requirements.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priority since publication of the NPP follows.

Comment: Four commenters recommended that the Center include a focus on increasing the capacity of parents to understand the statutory, regulatory, and instructional programming bases for including all students with disabilities in State and districtwide assessments. These commenters noted that parents lack sufficient information regarding the participation of students with disabilities in State and districtwide assessments.

Discussion: We agree with the commenters regarding the importance of increasing the capacity of parents to understand the statutory, regulatory, and instructional programming bases for including all students with disabilities in State and districtwide assessments as well as other assessments used for educational programming and instructional purposes. Increasing parents' understanding in this area is likely to help ensure their meaningful involvement in decisions States make in analyzing and using diagnostic, interim, and summative assessment data to better achieve their State-Identified Measurable Result (SIMR), for those States that have a SIMR related to assessment, while at the same time incentivizing States to ensure the data reviewed and analyzed by the parents are of the highest quality; and thus improve data quality and use under IDEA Part B, consistent with section 611(c) of the IDEA and the Consolidated Appropriations Act, 2021, which authorizes the Secretary to use funds reserved under section 611(c) of the IDEA to administer and carry out other services and activities to improve data collection, coordination, quality, and use under Parts B and C of the IDEA. Therefore, we are revising the priority to require applicants to propose how the Center will increase the awareness of and understanding by parents of students with disabilities, regarding how students with disabilities are included in, and benefit from, participation in State and districtwide assessments and other assessments used for educational programming and instructional purposes to improve instruction of students with disabilities and support the implementation of the SIMR.

Changes: We have revised the expected outcomes of the priority by requiring applicants propose how the Center will increase parents of students with disabilities' awareness of and understanding of how students with disabilities are included in, and benefit from, participation in diagnostic, interim and summative assessments.

Comment: One commenter recommended revising references to ''interim'' assessments to ''formative'' assessments, noting that ''interim'' implies a less prescriptive and formal process than ''formative.''

Discussion: We understand the point the commenter makes in general regarding the common meanings of the terms ''interim'' and ''formative''; however, we disagree with the commenter that these distinctions apply to large-scale State and districtwide academic assessments. Interim assessments are more prescriptive and formal than formative assessments. Interim academic assessments typically focus on measuring student achievement based on a subset of State or school district established grade-level academic content standards. As such, they are designed to measure individual and collective student growth and are used to evaluate the effectiveness of teaching practices, programs, and initiatives; and project whether a student, class, or school is on track to achieve established proficiency benchmarks. Interim assessments can also provide information regarding the instructional needs of individual students, but to a lesser extent than formative assessments. In contrast, formative assessments typically are connected to a discrete instructional unit, the results of which are intended to help educators guide the learning process of individual students, rather than measure student performance against State or districtwide academic content and achievement standards.

Changes: None.

Comment: One commenter stated that the structure of the notice was confusing, and, in response to Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing,'' recommended ways to reformat the proposed priority to improve clarity.

Discussion: The formatting for the notice published in the **Federal Register** was consistent with the Department's formatting requirements for publishing proposed priorities. However, we

appreciate the commenter's feedback and will consider the commenter's formatting recommendations for future proposed priorities. In addition, we have described above our reasons for the structure of the NPP, and this NFP.

Changes: None.

Final Priority

Targeted and Intensive Technical Assistance to States on the Analysis and Use of Diagnostic, Interim, and Summative Assessment Data To Support Implementation of States' Identified Measurable Results

The purpose of this priority is to (1) assist those States that have a SIMR related to assessment in analyzing and using diagnostic, interim, and summative assessment data to better achieve the SIMR as described in their IDEA Part B State Systemic Improvement Plans (SSIPs); and (2) assist State efforts to provide technical assistance (TA) to local educational agencies (LEAs) in analyzing and using State and districtwide assessment data, for those States that have a SIMR related to assessment, to better achieve the SIMR, as appropriate.

The Center must achieve, at a minimum, the following expected outcomes:

(a) Increased capacity of State educational agency (SEA) personnel in States that have a SIMR related to assessment results to analyze and use diagnostic, interim and summative assessment data to better achieve the SIMR as described in the IDEA Part B SSIPs, including using diagnostic, interim and summative assessment data to evaluate and improve educational policy, inform instructional programs, and improve instruction for students with disabilities;

(b) Increased capacity of SEA personnel to provide TA to LEAs to analyze and use diagnostic, interim and summative assessment data to improve instruction of students with disabilities and support the implementation of the SIMR; and

(c) Increased capacity of parents of students with disabilities to understand how students with disabilities are included in, and benefit from, participation in diagnostic, interim and summative assessments to improve instruction of students with disabilities and support implementation of the SIMR.

In addition to these program requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements under the priority *Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities—National Assessment Center* and the following application and administrative requirements, which are:

(a) Demonstrate, in the narrative section of the application under ''Significance,'' how the proposed project will—

(1) Address the needs of SEAs and LEAs to analyze and use diagnostic, interim, and summative assessment data in instructional decision-making to improve teaching and learning for students with disabilities. To meet this requirement the applicant must—

(i) Present applicable national, State, and local data demonstrating the needs of SEAs and LEAs to analyze and use diagnostic, interim, and summative assessment data in instructional decision-making to improve teaching and learning for students with disabilities;

(ii) Demonstrate knowledge of current educational issues and policy initiatives related to analyzing and using diagnostic, interim, and summative assessment data in instructional decision-making to improve teaching and learning for students with disabilities; and

(iii) Describe the current level of implementation related to analyzing and using diagnostic, interim, and summative assessment data in instructional decision-making to improve teaching and learning for students with disabilities; and

(2) Improve the analysis and use of diagnostic, interim, and summative assessment data to improve teaching and learning for students with disabilities.

(b) Demonstrate, in the narrative section of the application under ''Quality of project services,'' how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will—

(i) Identify the needs of the intended recipients for TA and information; and

(ii) Ensure that products and services meet the needs of the intended recipients (*e.g.,* by creating materials in formats and languages accessible to the stakeholders served by the intended recipients);

(2) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) In appendix A, the logic model [1] by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

(3) Use a conceptual framework (and provide a copy in Appendix A) to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

Note: The following websites provide more information on logic models and conceptual frameworks: *www.osepideasthatwork.org/logicModel* and *www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework.*

(4) Be based on current research and make use of evidence-based [2] practices (EBPs). To meet this requirement, the applicant must describe—

(i) The current research on the effectiveness of analyzing and using diagnostic, interim, and summative assessment data in instructional decision-making to improve teaching and learning for students with disabilities; and

(ii) How the proposed project will incorporate current EBPs in the development and delivery of its products and services;

(5) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) How it proposes to identify or develop the knowledge base on analyzing and using diagnostic, interim, and summative assessment data in instructional decision-making to improve teaching and learning for students with disabilities;

(ii) Its proposed approach to universal, general TA,[3] which must

[1] Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

[2] For the purposes of this priority, ''evidence-based'' means, at a minimum, evidence that demonstrates a rationale (as defined in 34 CFR 77.1), where a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

[3] ''Universal, general TA'' means TA and information provided to independent users through their own initiative, resulting in minimal

identify the intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(iii) Its proposed approach to targeted, specialized TA,[4] which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach; and

(B) Its proposed approach to measure the readiness of potential TA recipients to work with the project, assessing, at a minimum, their current infrastructure, available resources, and ability to build capacity at the local level; and

(iv) Its proposed approach to intensive, sustained TA,[5] which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(B) Its proposed approach to measure the readiness of SEA and LEA personnel to work with the project, including their commitment to the initiative, alignment of the initiative to their needs, current infrastructure, available resources, and ability to build capacity at the SEA and LEA levels;

(C) Its proposed plan for assisting SEAs (and LEAs, in conjunction with SEAs) to build or enhance training systems that include professional development based on adult learning principles and coaching;

(D) Its proposed plan for working with appropriate levels of the education system (*e.g.,* SEAs, regional TA providers, LEAs, schools, and families) to ensure that there is communication between each level and that there are systems in place to support the collection, analysis, and use of diagnostic, interim, and summative assessment data in instructional decision-making to improve teaching and learning for students with disabilities; and

(E) Its proposed plan for collaborating and coordinating with Department-funded TA investments, where appropriate, in order to align complementary work and jointly develop and implement products and services to meet the purposes of this priority;

(6) Develop products and implement services that maximize efficiency. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes;

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration; and

(iii) How the proposed project will use non-project resources to achieve the intended project outcomes; and

(7) Develop a dissemination plan that describes how the applicant will systematically distribute information, products, and services to varied intended audiences, using a variety of dissemination strategies, to promote awareness and use of the Center's products and services.

(c) In the narrative section of the application under ''Quality of the project evaluation,'' include an evaluation plan for the project developed in consultation with and implemented by a third-party evaluator.[6] The evaluation plan must—

(1) Articulate formative and summative evaluation questions, including important process and outcome evaluation questions. These questions should be related to the project's proposed logic model required in paragraph (b)(2)(ii) of these requirements;

(2) Describe how progress in and fidelity of implementation, as well as project outcomes, will be measured to answer the evaluation questions. Specify the measures and associated instruments or sources for data appropriate to the evaluation questions. Include information regarding reliability and validity of measures where appropriate;

(3) Describe strategies for analyzing data and how data collected as part of this plan will be used to inform and improve service delivery over the course of the project and to refine the proposed logic model and evaluation plan, including subsequent data collection;

(4) Provide a timeline for conducting the evaluation, and include staff assignments for completing the plan. The timeline must indicate that the data will be available annually for the annual performance report (APR) and at the end of Year 2 for the review process described under the heading, *Fourth and Fifth Years of the Project;* and

(5) Dedicate sufficient funds in each budget year to cover the costs of developing or refining the evaluation plan in consultation with a ''third-party'' evaluator, as well as the costs associated with the implementation of the evaluation plan by the third-party evaluator.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of resources and quality of project personnel,'' how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits.

(e) Demonstrate, in the narrative section of the application under ''Quality of the Management Plan,'' how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

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interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center's website by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

[4] ''Targeted, specialized TA'' means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

[5] ''Intensive, sustained TA'' means TA services often provided on-site and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. ''TA services'' are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

[6] A ''third-party'' evaluator is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except for the evaluation activities, nor have any financial interest in the outcome of the evaluation.

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policy makers, among others, in its development and operation.

(f) Address the following application requirements. The applicant must—

(1) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative; [7]

(2) Include, in the budget, attendance at the following:

(i) A one and one-half day kick-off meeting in Washington, DC, or virtually, after receipt of the award, and an annual planning meeting in Washington, DC, or virtually, with the OSEP project officer and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(ii) A two and one-half day project directors' conference in Washington, DC, or virtually, during each year of the project period;

(iii) Two annual two-day trips, or virtually, to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP; and

(iv) A one-day intensive 3+2 review meeting in Washington, DC, or virtually, during the second year of the project period;

(3) Include, in the budget, a line item for an annual set-aside of five percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with, and approved by, the OSEP project officer. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period;

(4) Maintain a high-quality website, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility;

(5) Ensure that annual project progress toward meeting project goals is posted on the project website; and

(6) Include, in Appendix A, an assurance to assist OSEP with the transfer of pertinent resources and products and to maintain the continuity of services to States during the transition to a new award at the end of this award period, as appropriate.

Fourth and Fifth Years of the Project:

In deciding whether to continue funding the project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), including—

(a) The recommendations of a 3+2 review team consisting of experts who have experience and knowledge in providing technical assistance to SEA and LEA personnel in including students with disabilities in assessments and accountability systems. This review will be conducted during a one-day intensive meeting that will be held during the last half of the second year of the project period;

(b) The timeliness with which, and how well, the requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The quality, relevance, and usefulness of the project's products and services and the extent to which the project's products and services are aligned with the project's objectives and likely to result in the project achieving its intended outcomes.

Under 34 CFR 75.253, the Secretary may reduce continuation awards or discontinue awards in any year of the project period for excessive carryover balances or a failure to make substantial progress. The Department intends to closely monitor unobligated balances and substantial progress under this program and may reduce or discontinue funding accordingly.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This document does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866. Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a ''major rule,'' as defined by 5 U.S.C. 804(2).

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent

[7] OSEP has found that a minimum of a three-quarter time equivalency (0.75 FTE) in the role of project director (or divided between a half-time equivalency in the role of the project director and a quarter-time equivalency in the role of a co-project director) is necessary to ensure effective implementation of the management plan and that products and services provided are of high quality, relevant, and useful to recipients.

permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing the final priority only on a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with these Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Discussion of Potential Costs and Benefits

The Department believes that the costs associated with the final priority will be minimal, while the benefits are significant. The Department believes that this regulatory action does not impose significant costs on eligible entities. Participation in this program is voluntary, and the costs imposed on applicants by this regulatory action will be limited to paperwork burden related to preparing an application. The benefits of implementing the program to focus attention on an identified need to address national, State, and local assessment issues related to students with disabilities, including students with disabilities who are also ELs, will outweigh the costs incurred by applicants, and the costs of carrying out activities associated with the application will be paid for with program funds. For these reasons, we have determined that the costs of implementation will not be excessively burdensome for eligible applicants, including small entities.

Regulatory Alternatives Considered

The Department believes that the priority is needed to administer the program effectively.

Paperwork Reduction Act of 1995

The final priority contains information collection requirements that are approved by OMB under control number 1820–0028; the final priority does not affect the currently approved data collection.

Regulatory Flexibility Act Certification: The Secretary certifies that this final regulatory action will not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration (SBA) Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below $7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

The small entities that this final regulatory action will affect are SEAs; LEAs, including charter schools that operate as LEAs under State law; institutions of higher education; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations. We believe that the costs imposed on an applicant by the final priority and requirements will be limited to paperwork burden related to preparing an application and that the benefits of this final priority will outweigh any costs incurred by the applicant.

Participation in Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities and Technical Assistance on State Data Collection—National Assessment Center program is voluntary. For this reason, the final priority will impose no burden on small entities unless they applied for funding under the program. We expect that in determining whether to apply for the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities and Technical Assistance on State Data Collection—National Assessment Center program funds, an eligible entity will evaluate the requirements of preparing an application and any associated costs and weigh them against the benefits likely to be achieved by receiving a Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities and Technical Assistance on State Data Collection—National Assessment Center program grant. An eligible entity will most likely apply only if it determines that the likely benefits exceed the costs of preparing an application.

We believe that the final priority will not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the final action. That is, the length of the applications those entities would submit in the absence of the final regulatory action and the time needed to prepare an application will likely be the same.

This final regulatory action will not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Katherine Neas,

Acting Assistant Secretary for the Office of Special Education and Rehabilitative Services.

[FR Doc. 2021–16853 Filed 8–3–21; 4:15 pm]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AR25

Presumptive Service Connection for Respiratory Conditions Due to Exposure to Particulate Matter

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: The Department of Veterans Affairs (VA) is issuing this interim final rule to amend its adjudication regulations to establish presumptive service connection for three chronic respiratory health conditions, *i.e.,* asthma, rhinitis, and sinusitis, to include rhinosinusitis, in association with presumed exposures to fine, particulate matter. These presumptions would apply to veterans with a qualifying period of service, *i.e.,* who served on active military, naval, or air service in the Southwest Asia theater of operations during the Persian Gulf War (hereafter Gulf War), as well as in Afghanistan, Syria, Djibouti, or Uzbekistan, on or after September 19, 2001, during the Gulf War. This amendment is necessary to provide expeditious health care, services, and benefits to Gulf War Veterans who were potentially exposed to fine, particulate matter associated with deployment to the Southwest Asia theater of operations, as well as Afghanistan, Syria, Djibouti, and Uzbekistan. The intended effect of this amendment is to address the needs and concerns of Gulf War Veterans and service members who have served and continue to serve in these locations as military operations in the Southwest Asia theater of operations have been ongoing from August 1990 until the present time. Neither Congress nor the President has established an end date for the Gulf War. Therefore, to provide immediate health care, services, and benefits to current and future Gulf War Veterans who may be affected by particulate matter due to their military service, VA intends to provide presumptive service connection for the chronic disabilities of asthma, rhinitis, and sinusitis, to include rhinosinusitis, as well as a presumption of exposure to fine, particulate matter. This will ease the evidentiary burden of Gulf War Veterans who file claims with VA for these three conditions, which are among the most commonly claimed respiratory conditions.

DATES:

Effective Date: This interim final rule is effective on August 5, 2021.

Applicability Date: The provisions of this interim final rule shall apply to all applications for service connection for asthma, rhinitis, and sinusitis based on service in the Southwest Asia theater of operations, as well as Afghanistan, Syria, Djibouti, or Uzbekistan, during the Persian Gulf War that are received by VA on or after August 5, 2021, or that were pending before VA, the United States Court of Appeals for Veterans Claims, or the United States Court of Appeals for the Federal Circuit on August 5, 2021.

Comment Date: Comments must be received on or before October 4, 2021.

ADDRESSES: Comments may be submitted through *www.regulations.gov* or mailed to, Compensation Service, 21C, 1800 G Street NW, Suite 644A, Washington, DC 20006. Comments should indicate that they are submitted in response to ''RIN 2900–AR25—Presumptive Service Connection for Respiratory Conditions Due to Exposure to Particulate Matter''. Comments received will be available at regulations.gov for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Jane Che, Director, VA Schedule for Rating Disabilities Program Office (210), Compensation Service, Veterans Benefits Administration (VBA), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–9700. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

I. National Academies of Science, Engineering, and Medicine (NASEM) [1] and National Research Council (NRC) Reports

More than 3.7 million United States service members have participated in operations in Southwest Asia. During and after the initial Gulf War conflict, veterans began reporting a variety of health problems, as documented through the NASEM Gulf War and Health, Volumes 1 through 11. In addition, concerns continue to be raised by service members, veterans, veteran advocates, and Congress about possible adverse health consequences related to in-theater exposures to particulate matter, including smoke from open burn pits, and other airborne hazards. Several studies by NASEM have examined the possible contribution of air pollution to adverse health effects among U.S. military personnel serving in the Middle East or their descendants.[2]

a. 2010 NRC Report, Review of the Department of Defense (DoD) Enhanced Particulate Matter Surveillance Program

In February 2008 the Department of Defense issued the Department of Defense Enhanced Particulate Matter Surveillance Program (EPMSP) Final Report.[3] The purpose of the study was to provide information on the chemical and physical properties of dust collected at deployment locations. Aerosol and bulk soil samples were collected during a period of

[1] Originally, the National Academy of Medicine was the Institute of Medicine (IOM). In 2015, the IOM was reconstituted as the National Academy of Medicine (NAM), a component of the National Academies of Sciences, Engineering, and Medicine (NASEM). The term NASEM is used in this rule to refer to reports published by IOM and NAM.

[2] NASEM, Gulf War and Health Series: Volume 3: Fuels and Products of Combustion (2005), *https://doi.org/10.17226/11180* and Volume 11: Generational Health Effects of Serving in the Gulf War (2018), *https://doi.org/10.17226/25162.* NASEM, Respiratory Health Effects of Airborne Hazards Exposures in the Southwest Asia Theater of Military Operations (2020), *https://doi.org/10.17226/25837.*

[3] Department of Defense Enhanced Particulate Matter Surveillance Program (EPMSP) Final Report (2008), *https://apps.dtic.mil/sti/pdfs/ADA605600.pdf.*

approximately one year at 15 military sites—including Djibouti, Afghanistan (Bagram, Khowst), Qatar, United Arab Emirates, Iraq (Balad, Baghdad, Tallil, Tikrit, Taji, Al Asad), and Kuwait (Northern, Central, Coastal, and Southern regions). The Enhanced Particulate Matter Surveillance Program Report found that exposures in the region may have exceeded military/national exposure guidelines, including EPA's 24-hr NAAQS for $PM_{2.5}$ (see p.4 and p. 8, Figure 4–1).

The National Research Council (NRC) of NASEM independently reviewed DOD's final report in Review of the Department of Defense Enhanced Particulate Matter Surveillance Program Report in 2010.[4] The NRC committee highlighted that the EPMSP was one of the first large-scale efforts to characterize PM exposure in deployed military personnel. Despite the practical challenges of conducting this effort in an austere deployment environment, the NRC Report found the results of the EMPSP can be viewed as providing sufficient evidence that deployed military personnel endured occupational exposure to a potential hazard to justify implementation of a comprehensive medical-surveillance program to assess PM-related health effects in military personnel deployed in the Middle East Theater.

The NRC committee noted the EPMSP's approach and methodological techniques preclude comparison to existing literature on air sampling and limit a full understanding of PM chemical composition. The study also describes the challenges associated with conducting exposure-assessment/health surveillance studies, including related to: The need to have co-deployed medical/public health experts to conduct sampling; limitations in monitoring technologies in harsh environments for which they have not been validated and where they may overestimate concentrations due to bounce-off problems, limitations in DOD's health effects studies, difficulties in characterization of exposure of troops to multiple sources (dust storms, vehicle emissions, and emissions from burn pits), and potential confounding factors (such as smoking). This along with the infrequency of sampling as well as the lack of consideration of other ambient pollutants in the deployment environment make it challenging to fully ascertain the relationship between exposure data and health effects. Further complicating this interpretation are the paucity of exposure data from earlier conflicts, such as the first Gulf War, that limit understanding of potential chronic health effects.

Despite these limitations, the NRC committee found that the EPMSP results clearly documented that deployed Service Members deployed in the Middle East ''are exposed to high concentrations of PM and that the particle composition varies considerably over time and space.'' Further, the NRC Report committee concluded that ''it is indeed plausible that exposure to ambient pollution in the Middle East theater is associated with adverse health outcomes.'' The health outcomes noted may occur both during service (acute) as well as manifest years after exposure (chronic).

b. 2011 NASEM Report, Long-Term Consequences of Exposure to Burn Pits in Iraq and Afghanistan

To further address and investigate this service member exposures, VA requested that NASEMexamine the long-term health consequences of service members' exposure to open burn pits while serving in Iraq and Afghanistan. In NASEM's report, Long-Term Consequences of Exposure to Burn Pits in Iraq and Afghanistan, published in 2011, NASEM concluded that particulate matter from regional sources was of potential importance.[5] The report also recommended that VA expand its research studies beyond burn pits to explore the role of a broader range of possible airborne hazards.

c. 2020 NASEM Report Respiratory Health Effects of Airborne Hazards Exposures in the Southwest Asia Theater of Military Operations

In September 2018, the VA Post Deployment Health Services (PDHS) requested NASEM to study the respiratory health effects of airborne hazards exposures in Southwest Asia. Specifically, VA requested NASEM to evaluate the extent to which the existing knowledge base informs the understanding of the potential adverse effects of in-theater military service on respiratory health; identify gaps in research that could feasibly be addressed for outstanding questions; Review newly emerging technologies that could aid in these efforts, and identify organizations that VA might partner with to accomplish this work.

A NASEM committee was formed to undertake this review, which completed its work in early summer 2020. On September 11, 2020, NASEM published its findings and recommendations in the report, Respiratory Health Effects of Airborne Hazards Exposures in the Southwest Asia Theater of Military Operations.[6] The NASEM committee focused on ''hazards associated with burn pit exposures; Excess mortality, cancer, bronchial asthma, chronic bronchitis, sinusitis, constrictive bronchiolitis, and other respiratory health outcomes that are of great concern to veterans; and emerging evidence on respiratory health outcomes in service members from research such as the Millennium Cohort Study, Study of Active Duty Military for Pulmonary Disease Related to Environmental Deployment Exposures (STAMPEDE), National Health Study for a New Generation of U.S. Veterans, Comparative Health Assessment Interview (CHAI) Study, Pulmonary Health and Deployment to Iraq and Afghanistan Objective Study, Effects of Deployment Exposures on Cardiopulmonary and Autonomic Function Study, and research being conducted by the Department of Veterans Affairs (VA) War Related Illness and Injury Study Center (WRIISC) Airborne Hazards Center of Excellence (AHCE) in New Jersey.''

The NASEM committee formulated a list of 27 respiratory health outcomes it deemed to be of concern to veterans in its review: Rhinitis, sinusitis, sleep apnea, vocal cord dysfunction, asthma, chronic bronchitis, chronic obstructive pulmonary disease, constrictive bronchiolitis, emphysema, acute eosinophilic pneumonia, hypersensitivity pneumonitis, idiopathic interstitial pneumonia, idiopathic pulmonary fibrosis, pulmonary alveolar proteinosis, sarcoidosis, acute bronchitis, pneumonia, tuberculosis, chronic persistent cough, shortness of breath (dyspnea), wheeze, esophageal cancer, laryngeal cancer, lung cancer, oral/nasal/pharyngeal cancers, as well as changes in pulmonary function and mortality due to diseases of the respiratory system.

The NASEM committee also considered different types and sources of exposure in its review: Exposures associated with military operations in the Southwest Asia theater such as open burn pits, emissions from the 2003 Al-Mishraq sulfur plant fire, fuels, oil-well fires, nerve agents, and depleted

[4] National Research Council, Review of the Department of Defense Enhanced Particulate Matter Surveillance Program Report (2010), *https://doi.org/10.17226/12911.*

[5] NASEM, Long-Term Health Consequences of Exposure to Burn Pits in Iraq and Afghanistan (2011), *https://doi.org/10.17226/13209.*

[6] NASEM, Respiratory Health Effects of Airborne Hazards Exposures in the Southwest Asia Theater of Military Operations (2020), *https://doi.org/10.17226/25837.*

uranium; regional environmental exposures such as air pollution, particulate matter, biologic agents and allergens, the toxicity of sand and dust; and occupational exposures such as vapors, gases, dust, and fumes.

The summarized findings of the 2020 NASEM report found that: (1) Of the 27 different respiratory systems and diseases, three respiratory symptoms, *i.e.,* chronic persistent cough, shortness of breath (dyspnea), and wheezing, met the criteria for limited or suggestive evidence of an association with service in Southwest Asia whereas the remaining 24 conditions had inadequate or insufficient evidence to determine an association; (2) deployment to the 1990–1991 Gulf War and changes in lung function were determined to have limited or suggestive evidence of no association; and (3) many of the studies that report on these conditions were weakened by bias due to self-selection of the participants and self-reported outcomes and exposures and/or lack of control for confounders such as cigarette smoking.

The 2020 NASEM report stated that, while there was inadequate or insufficient evidence to determine an association between respiratory health outcomes and deployment to Southwest Asia, the existing studies included were limited in the available data in exposure estimation; the availability of pertinent health, physiologic, behavioral, and biomarker data, especially data collected both pre-and post-deployment; the amount of time that passed since exposure; and use of additional or alternate sources of data that might enrich analyses. The NASEM committee recommended that a new approach was needed to allow researchers to better examine and respond to whether specific respiratory outcomes are associated with deployment.

d. VA's Review and Analysis of the 2020 NASEM Report: Respiratory Health Effects of Airborne Hazards Exposures in the Southwest Asia Theater of Military Operations

VA adheres to established internal procedure requiring it to review and respond to the recommendations in NASEM reports as outlined in VA Directive 0215, *Management of Reports Issued by the National Academies of Sciences, Engineering, and Medicine.* This VA Directive establishes the process for developing responses to all NASEM studies, whether legally mandated or not. VA is not obligated by statute to provide Congress with VA's response to the 2020 NASEM report.

Pursuant to the VA Directive process, VA convened a workgroup of VA subject matter experts (SMEs) in disability compensation, health care, infectious diseases, occupational and environmental medicine, public health, epidemiology, toxicology, and research. The workgroup convened in early spring of 2021 and was composed of subject matter experts from the Veterans Health Administration and the Veterans Benefits Administration. This workgroup was charged with analyzing the information presented by NASEM and informing the VA Secretary of its findings. The VA workgroup used the same management, coordination, and collaboration process in responding to NASEM reports that are undertaken and submitted because of legal mandates.

Upon review of the findings and recommendations of the 2020 NASEM report, the VA workgroup noted that NASEM focused its review on ''airborne hazards encountered during service in Southwest Asia Theater of Military Operations and Afghanistan'' but did not opine on the relevance of the literature regarding the potential impact of long-term general population or occupational exposure to ambient levels of particulate matter pollution in nor the mechanistic, animal and toxicologic studies. Other Federal agencies (*i.e.,* the Environmental Protection Agency, Occupational Safety and Health Administration, and the National Institutes for Health) have explored those relationships in detail. In addition, VA conducted its own review of epidemiological studies of population exposures related to cough, wheeze, and shortness of breath (dyspnea). The practice per VA Directive 0215 is that the VA workgroup on NASEM reports reviews pertinent literature that has been published during the time following the NASEM literature review and writing/publication of the report. VA identified the narrowed focus of the NASEM literature that omitted areas of inquiry that were felt to be relevant to a complete understanding of the hazards associated with respiratory outcomes.

While the 2020 NASEM report concluded there was inadequate or insufficient evidence of an association between airborne hazards exposures in the Southwest Asia theater and subsequent development of rhinitis, sinusitis, and asthma, the report did conclude that certain respiratory symptoms such as chronic persistent cough, shortness of breath (dyspnea), and wheeze did have limited or suggestive evidence of an association. Understanding the immediate needs and concerns of the Gulf War cohort and airborne exposures in service, VA reviewed the most commonly claimed chronic conditions related to airborne hazards for disability compensation benefits (as described further below) and found that asthma, sinusitis, and rhinitis were the most commonly claimed and granted respiratory conditions, and these conditions also most closely represented the symptomatology of chronic persistent cough, shortness of breath (dyspnea), and wheeze. Sleep apnea was noted as the top claimed and granted respiratory condition. However, VA has not identified literature to support inclusion of sleep apnea as a presumption at this time. VA is currently reviewing the other disabilities reviewed by NASEM in the 2020 report for consideration for potential presumptive service connection. VA will utilize a phased approach in reviewing these disabilities to explore additional studies and data.

e. VA's Review of Internal Claims Data

In response to the 2020 NASEM report, VA analyzed respiratory claims data for veterans who were deployed to Southwest Asia theater of operations and other locations and compared this data to a similar cohort of veterans who served during the same period but who had never deployed. Based on a review of aggregate claims data (see table below), VA observed that the claims rates for rhinitis, sinusitis, and asthma in the combined Gulf War I and GWOT deployed cohorts were higher than the claims rates of similar non-deployed cohorts. In addition, the service-connection prevalence rates, (*i.e.,* percentage of cohort population for which VA finds service connection) were higher for the deployed cohorts than the non-deployed cohorts.

TABLE 1—AGGREGATE DISABILITY CLAIMS DATA BY COHORT

	GW 1 deployed	*GW 1-era non-deployed*	*GWOT deployed*	*GWOT-era non-deployed*	*K2 cohort (subset)*	*Totals across cohorts*
Population Size	750,205	2,615,287	2,450,344	2,599,446	15,670	8.4 M

TABLE 1—AGGREGATE DISABILITY CLAIMS DATA BY COHORT—Continued

	GW 1 deployed	GW 1-era non-deployed	GWOT deployed	GWOT-era non-deployed	K2 cohort (subset)	Totals across cohorts
Rhinitis						
# Claims	16,684	26,094	276,609	91,063	1,564	410,810
Claims Rate [1]	2.2%	1%	11.3%	3.5%	10%	4.9%
# Grants	8,405	14,131	206,348	64,522	1,198	293,406
Grant Rate [2]	49.3%	54.2%	74.6%	70.9%	76.6%	71%
Sinusitis						
# Claims	22,787	37,740	195,747	65,863	1,206	322,137
Claims Rate [1]	2.2%	1.4%	8%	2.5%	7.7%	3.8%
# Grants	9,869	18,235	87,151	29,849	571	145,104
Grant Rate [2]	43.3%	48.3%	44.5%	45.3%	47.3%	45%
Asthma						
# Claims	18,126	25,052	123,739	46,180	435	212,805
Claims Rate [1]	2.4%	1%	5%	1.8%	2.8%	2.5%
# Grants	7,453	12,910	62,971	25,209	210	108,543
Grant Rate [2]	41.8%	51.5%	50.9%	54.6%	48.3%	51%

VBA Corporate Data, as of April 2021.
[1] "Claims Rate" is the percentage of cohort who filed a claim for service connection.
[2] "Grant Rate" is percentage of claims granted service connection.

This increased volume of claims and the sheer number of grants within the deployed cohorts for these conditions was critical in determining that more scientific review was necessary.

f. EPA's 2019 Integrated Science Assessment for Particulate Matter

The Environmental Protection Agency's (EPA's) Integrated Science Assessment (ISA) ''is a comprehensive evaluation and synthesis of policy-relevant science aimed at characterizing exposures to ambient particulate matter (PM), and health and welfare effects associated with these exposures.'' The evaluation of the science and the overarching conclusions of the ISA serves as the scientific foundation for the review of the primary (health-based) and secondary (welfare-based) National Ambient Air Quality Standards for Particulate Matter in the United States. EPA's ISA is prepared through a structured and transparent process that includes review by a formal independent panel of scientific experts (specifically, the Clean Air Scientific Advisory Committee) and by the public.[7] The ISA uses a formal causal framework to classify the weight of the evidence for health effects.

The EPA's causal framework and approach to evaluating the scientific evidence that informs the corresponding causality determinations is outlined in the ''Preamble To The Integrated Science Assessments (ISA)'' available at *https://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=310244.* Within the ISAs, the EPA evaluates and integrates evidence across scientific disciplines to assess the causal nature of relationships between PM and health or welfare effects. Specifically, during the evaluation of the health effects evidence the focus is on assessing consistency of effects within a discipline, coherence of effects across disciplines, and whether there is evidence of biologically plausibility, while also taking into consideration the exposures of studies. The 2019 PM ISAs, EPA concluded that there is a ''likely to be causal relationship'' between both short- (*i.e.,* hours up to a month) and long-term (*i.e.,* month to years) exposure to fine particulate matter and respiratory health effects. Their definition of a 'likely to be causal relationship' is as follows, ''*Evidence is sufficient to conclude that a causal relationship is likely to exist with relevant pollutant exposures. That is, the pollutant has been shown to result in health effects in studies where results are not explained by chance, confounding, and other biases, but uncertainties remain in the evidence overall.*'' (c.f., Table P–2). For long-term $PM_{2.5}$ exposure, the strongest evidence is for changes in lung function and lung function growth and asthma development in children. For adults there is evidence of acceleration of lung function decline, but inconsistent evidence for asthma development. Additionally, there is very limited, and inconsistent evidence of respiratory effects in healthy populations for both short- and long-term $PM_{2.5}$ exposure. The strongest evidence is from animal toxicological studies, but this is not consistent with epidemiologic and controlled human exposure studies.

g. VA's Comprehensive Supplemental Literature Review

VA's Health Outcomes Military Exposures (HOME) and the Airborne Hazards and Burn Pits Center of Excellence (AHBPCE) completed a literature review of asthma, sinusitis, and rhinitis that specifically considered literature on general population exposures to particulate matter in non-deployment settings. Additional relevant literature published after the 2020 NASEM report was identified, and the VA workgroup met to define search parameters and inclusion/exclusion criteria for literature review.

The VA workgroup utilized the PICOTS (Patient, Intervention/Exposure, Comparator, Outcomes, Timing, Setting) Framework (see below, Table 2—PICOTS Framework) to strengthen the evidence gathered, which was refined in consultation with the Director of the Veterans Affairs Central Office Library, who conducted the primary search. VA SMEs also performed a supplemental search to ensure completeness. To incorporate the full range of evidence, human and non-human studies were considered. ''Human studies'' refers to observational, case-control, cohort, and meta-analytic studies involving people.

[7] *See, e.g.,* Clean Air Science Advisory Committee (CASAC), CASAC Review of the EPA's Integrated Science Assessment for Particulate Matter (External Review Draft—October 2018) (Apr. 2019), available at *https://yosemite.epa.gov/sab/sabproduct.nsf/6CBCBBC3025E13B4852583D90047B352/$File/EPA-CASAC-19-002+.pdf.*

''Non-human studies'' refers to experimental research not performed on people but includes in-vivo and in-vitro studies in animal models, cell lines, and donated human tissue. Such research is particularly useful for determining if specific air pollutants or a mixture thereof is related to respiratory symptoms that might reasonably be seen as precursors to or analogous with the symptoms documented in humans (*i.e.,* biological plausibility). Initial literature screening was performed by VA SMEs to ensure appropriateness for review as well as assignment to human and non-human categories.

Additional SMEs were recruited to critically evaluate the strengths and weakness of evidence using a semi-quantitative transparent approach that was based on the Grading of Recommendations Assessment, Development and Evaluation (GRADE) structure. Each reviewing SME was provided with instructions on the overall goals of the review, the PICOTS framework (below) as well as instructions on the scoring matrix with the GRADE structure. Each article was evaluated by at least two subject matter experts, and the aggregate results were reviewed by a panel of subject matter experts to derive consensus opinion.

TABLE 2—PICOTS FRAMEWORK

PICOTS term	Human studies	Non-Human studies
Patient Population OR Problem.	Adults (18–50 years)	Relevant model systems (*e.g.,* in-vitro, in-vivo).
Intervention OR Exposure	Chronic exposure to particulate matter ($PM_{2.5}$) air pollution.	Acute/chronic exposure to $PM_{2.5}$.[8]
Comparator	No exposure (or fine PM levels < federal guidelines)	No exposure.
Outcomes	ICD–9/10 codes[9] for respiratory conditions and/or biomarkers consistent with these conditions.	Respiratory condition phenotypes and/or observed behaviors.
Timing	Months to years	Days to months.
Setting	All countries	Not applicable.

The 2020 NASEM report reviewed different types of exposures such as open burn pits, emissions from the 2003 Al-Mishraq sulfur plant fire, fuels, oil-well fires, nerve agents, and depleted uranium; regional environmental exposures such as air pollution, particulate matter, biologic agents, and allergens, toxicity of sand and dusts; and occupational exposures such as vapors, gases, dusts, and fumes. The supplemental review focused on fine particulate matter ($PM_{2.5}$), which is a mixture of solid particles and liquid droplets that have a mean aerodynamic diameter ≤2.5 microns.[10] The focus on $PM_{2.5}$ was intentional for the following reasons: (1) $PM_{2.5}$ is generated by a variety of sources including smoke from open burn pits, (2) the DoD's Enhanced Particulate Matter Surveillance Program objectively measured in-theater concentrations and documented concentrations of $PM_{2.5}$ that may have exceeded military and national exposure guidelines at deployment locations, and (3) its small diameter facilitates greater deposition into the lung and potential for harmful effects. It is recognized that the source of fine particles and their resultant chemical composition are important considerations beyond particle size that should be considered yet there is a paucity of these data.

Based on the observations from many veterans and studies that described particulates in Southwest Asia,[11] VA determined that the levels of particulate matter were high in Southwest Asia and could present a health risk to service members.

II. VA's Findings Post-2020 NASEM Report Review

As previously noted, the VA Technical Working Group identified knowledge gaps from the 2020 NASEM report and felt additional review of the literature, of relevance to service members and veterans, was warranted. In first reviewing the EPA's 2019 ISA on $PM_{2.5}$, it was noted that the literature reviewed included those articles published through 2017. In addition, the ISA included both children and adults and had a much broader scope. The VA's supplemental review was targeted to address these knowledge gaps. Ultimately, VA's conclusions on respiratory health effects were similar to those of the EPA's 2009 and 2019 ISAs. The VA committee acknowledges that: (1) There exists a range in the strength of association between $PM_{2.5}$ exposure and the respiratory conditions of interest, and (2) most of the population epidemiological studies are based upon the assumption that chronic respiratory symptoms are a function of long-term exposure and reductions in ambient concentration lead to resolution of short-term responses, and thus are difficult to apply to the exposure scenario experienced by service members in SW Asia. Therefore, VA's own literature review is not a sufficient basis for concluding that such exposure scenarios would be expected to cause incident (or new-onset) asthma, sinusitis, and/or rhinitis secondary to exposure.

VA acknowledges that there are important differences between potential exposures experienced by deployed service members and the populations in the studies relied upon by the ISA, and that there are limitations in evidence specific to deployed service members, as discussed above. In the context of regulating potential service connection related to presumed exposure and benefits there is a strong role for policy decisions.[12] The Secretary's broad

[8] Particulate matter size of 2.5 microns ($PM_{2.5}$)

[9] World Health Organization (WHO) authorized the publication of the *International Classification of Diseases* 10th Revision (ICD–10), which was implemented for mortality coding and classification from death certificates. The U.S. developed a Clinical Modification (CM) (ICD–10–CM) for medical diagnoses based on WHO's ICD–10. ICD–10–CM replaces ICD–9–CM, volumes 1 and 2.

[10] See US EPA, Particulate Matter (PM) Basics, *https://www.epa.gov/pm-pollution/particulate-matter-pm-basics.*

[11] *E.g., Summary—Review of the Department of Defense Enhanced Particulate Matter Surveillance Program Report—NCBI Bookshelf (nih.gov);* Lindsay T. McDonald et. al, Physical and elemental analysis of Middle East sands from recent combat zones, Am J Ind Med. 2020;63:980–987. Inhalation Toxicology, 2020, VOL. 32, NO. 5, 189–199. *https://doi.org/10.1080/08958378.2020.1766602.;* Johann P. Engelbrecht et al., Characterizing Mineral Dusts and Other Aerosols from the Middle East—Part 1: Ambient Sampling and Part 2: Grab Samples and Re-Suspensions, Inhalation Toxicology, International Forum for Respiratory Research 2009:4:297–326 and 327–336, *https://www.tandfonline.com/doi/full/10.1080/08958370802464273* and *https://www.tandfonline.com/doi/full/10.1080/08958370802464299.*

[12] *See, e.g.,* VA, Diseases Associated With Exposure to Certain Herbicide Agents (Hairy Cell Leukemia and Other Chronic B-Cell Leukemias, Parkinson's Disease and Ischemic Heart Disease), 75 FR 53202 (where there was only limited/suggestive evidence of an association between Ischemic Heart Disease and service and the Secretary exercised his

discretion weighs more strongly here than it would if the science related to the composition and duration of actual particulate matter and airborne hazard exposures of service members were more robust.

a. Gulf War Service

Based on the weight of the evidence considered as described above, VA presumes exposure to $PM_{2.5}$ for Gulf War veterans deployed in the Southwest Asia theater of operations, as defined in 38 CFR 3.317(e)(2) including Iraq, Kuwait, Saudi Arabia, the neutral zone between Iraq and Saudi Arabia, Bahrain, Qatar, the United Arab Emirates, Oman, the Gulf of Aden, the Gulf of Oman, the Persian Gulf, the Arabian Sea, and the Red Sea during the Persian Gulf War. Based on presumed $PM_{2.5}$ exposures, VA is granting a presumption of service connection for the chronic respiratory conditions of asthma, sinusitis, and rhinitis, to include rhinosinusitis, for the service periods and manifestation timelines that follow.

b. Service in Afghanistan, Syria, and Djibouti on or After September 19, 2001

The presumption of $PM_{2.5}$ exposure will also include those deployed to Afghanistan, Syria, and Djibouti on or after September 19, 2001, the earliest date when service members were deployed in these locations. The literature and studies overwhelmingly show the prevalence of particulate matter due to the nature of the arid climate in these locations as well.[13] VA determined that the Southwest Asia theater of operations, Afghanistan, Syria, and Djibouti had similar arid or semi-arid climates with periods of high winds to suspend geologic dusts and regional pollutants, adhered to or a part of these dusts, though the composition of the PM varies in different regions. Therefore, VA is including Afghanistan, Syria, and Djibouti as qualifying locations for presumption of service connection based on presumed exposure to $PM_{2.5}$.

VA's Airborne Hazards and Open Burn Pit Registry, which encourages veteran participation to help VA gather data and better understand the potential health effects of exposure to airborne hazards during military service, currently covers the Southwest Asia theater of operations, including Afghanistan, and will also expand the locations to include Syria and Uzbekistan. Expansion will be encouraged through periodic communications through the MyPay pay notifications with both active duty service members and veterans, and through press releases as well as through VA's Health Outcomes Military Exposures website (*https://www.publichealth.va.gov/exposures/burnpits/index.asp*).

As the literature and studies overwhelmingly demonstrate the prevalence of particulate matter in these locations, VA is including Afghanistan, Syria and Djibouti in addition to the Southwest Asia theater of operations, as qualifying locations for the presumption of service connection and exposure to fine, particulate matter.

c. Service in Uzbekistan on or After September 19, 2001

Furthermore, the VA workgroup recommended that the presumption of $PM_{2.5}$ exposure include those service members who were deployed to Uzbekistan in support of Operation Enduring Freedom. In March 2020, the Army Public Health Center issued, Environmental Conditions at Karshi Khanabad (K–2) Air Base, Uzbekistan, to provide information to service members and veterans on environmental exposures at the K–2 Air Base and the risk of potential long-term adverse health effects related to such deployment.[14] It noted that service members, mostly Army, Air Force and some Marines, were stationed at the air base Camp Stronghold Freedom from October 2001 to November 2005. This fact sheet referenced the results of three declassified assessments conducted by DoD, namely the Environmental Site Characterization and an Operational Health Risk Assessment completed in 2001 and follow-up Post-Deployment Occupational and Environmental Health Site Assessments completed in 2002 and 2004. The collective findings of these assessments found the K–2 Air Base often had high levels of dust and other particulate matter in the air, depending upon the season and weather conditions, but also noted significantly high levels of dust during dust storms. The fact sheet concluded that there was inconclusive evidence that there is an increased risk of chronic respiratory conditions associated with military deployment to K–2 Air Base. It was noted that DoD was collaborating with VA and independent researchers to further evaluate the potential long-term health risks related to deployment exposures.

Based on these findings regarding particulate matter exposure at the K–2 Air Base, VA will presume $PM_{2.5}$ exposure for those service members who were deployed to Uzbekistan on or after September 19, 2001. VA acknowledges that this will cover a greater geographic area and time frame than the other studies annotated in this document. However, VA believes this is a veteran-centric approach that will enhance its operational efficiencies by simplifying the work necessary for claims adjudication.

VA will continue to collaborate with DoD as directed by E.O. 13982, ''Care of Veterans with Service in Uzbekistan,'' executed on January 19, 2021, and published on January 25, 2021. This Executive Order requires that DoD conduct a study to assess the conditions at the K–2 Air Base, to identify any toxic substances that may have contaminated the Air Base, and to conduct an epidemiological study on potential health consequences for those deployed to K–2 Air Base. Once the studies have been completed, VA will consider the results and findings from these studies in making determinations regarding diseases subject to presumptive service connection.[15]

d. Manifestation Period for Chronic Respiratory Conditions of Asthma, Rhinitis, and Sinusitis

The VA workgroup also considered the onset of asthma, rhinitis, and sinusitis after service members separated from military service in the Southwest Asia theater of operations as well as Afghanistan, Syria, Djibouti, and Uzbekistan. The consensus of the VA workgroup was that the manifestation period for these three chronic respiratory conditions was generally five to 10 years after separation from service, supported by a review of claims data, and the human and epidemiological studies showed that manifestation of these respiratory conditions did not exceed 10 years. The VA Secretary will apply the liberal

discretionary authority to grant a presumption of service connection).

[13] See Lindsay T. McDonald, Steven J. Christopher, Steve L. Morton & Amanda C. LaRue (2020) ''Physical and elemental analysis of Middle East sands from recent combat zones,'' Inhalational Toxicology, 32:5, 189–199, available at *https://doi.org/10.1080/08958378.2020.1766602.* See UNEP, WMO, UNCCD (2016) ''Global Assessment of Sand and Dust Storms,'' United Nations Environment Programme, Nairobi, 1–15, 21–24, available at *https://uneplive.unep.org/redesign/media/docs/assessments/global_assessment_of_sand_and_dust_storms.pdf.*

[14] Army Public Health Center, Environmental Conditions at Karshi Khanabad (K–2) Air Base, Uzbekistan, Fact Sheet 64–038–0617, *https://phc.amedd.army.mil/PHC%20Resource%20Library/EnvironmentalConditionsatK-2AirBaseUzbekistan_FS_64-038-0617.pdf.* (accessed July 30, 2021).

[15] E.O. 13982, ''Care of Veterans With Service in Uzbekistan,'' (January 19, 2021), *https://www.federalregister.gov/documents/2021/01/25/2021-01712/care-of-veterans-with-service-in-uzbekistan.*

manifestation period of 10 years from separation from the last period of military service that includes a qualifying period of service. VA believes that a 10-year manifestation period for eligibility for presumptive service connection for the chronic respiratory conditions of asthma, rhinitis, and sinusitis, to include rhinosinusitis, would not only allow veterans time to seek healthcare treatment and/or diagnosis for such respiratory conditions after they leave military service but would expand eligibility to more Gulf War veterans if a longer manifestation period of 10 years was designated as opposed to a shorter manifestation period, *e.g.,* five years, which would preclude certain veterans who develop and/or are diagnosed with a chronic respiratory condition outside of this timeframe. In consideration of the length of the military operations in the Gulf War and a large number of affected service members and veterans, the 10-year manifestation period more liberally provides these veterans with the healthcare, benefits, and services they have earned.

In addition, there is no minimum time limit required for the length of military deployment. There is no set guidance on deployment and this varies widely by service: some smaller units may deploy for two weeks or less for specialized missions (special operations, construction units), while larger units may deploy for three to six months in the case of the U.S. Air Force, while some Army units have deployed in extreme cases for up to 15 months. There is no average deployment time because of these extremes.

Current VA regulations governing presumptive service connection for certain diseases such as chronic diseases, diseases associated with exposure to certain herbicide agents, and others, generally require that the presumptive disease manifest to a compensable degree (*i.e.,* 10-percent or more) within the applicable time limits. However, in other contexts, some adjudication regulations governing presumptive service connection, for example presumptions for certain diseases due to exposure to ionizing radiation in 38 CFR 3.311 and mustard gas in 38 CFR 3.316, as well as for amyotrophic lateral sclerosis in 38 CFR 3.318, do not require the associated disability to have manifested to a compensable degree or more. VA is opting against requiring a specific level or dose of exposure to particulate matter and is instead taking the more veteran-centric approach of presuming sufficient exposure based on service in these identified regions. This approach accounts for the fact that precise or specific information on individual veterans' exposures that is needed to support more granular policy is generally not available. In addition, this approach is also consistent with some other presumptions of service connection. For example, VA does not require exposure dosage for Vietnam veterans who were presumed to have been exposed to a herbicide agent such as Agent Orange.

Thus, VA will not require that the chronic respiratory conditions of asthma, rhinitis, and sinusitis, to include rhinosinusitis, manifest to a compensable degree or more so that more Gulf War Veterans can meet the lower eligibility criteria for presumptive service connection for exposure to fine, particulate matter even at a non-compensable level, which could also make veterans eligible to receive VA health care services for that condition at no cost to themselves.

One of the VA Secretary's priorities is to address the needs of the Gulf War cohort and to address the imminent need for care, services, and benefits to these veterans that is long overdue. The VA Secretary has determined that, for the three most commonly claimed respiratory health conditions, waiting for the results of additional studies for more conclusive scientific evidence would unnecessarily delay the delivery of services and benefits to veterans who served in the Gulf War. Based on the critical need to provide immediate benefits such as disability compensation and healthcare services to veterans as well as the supplemental analysis conducted by VA on the 2020 NASEM report, the VA Secretary is establishing presumptive service connection and a presumption of exposure to fine, particulate matter for those veterans who were deployed to the Southwest Asia theater of operations as well as Afghanistan, Syria, Djibouti, or Uzbekistan and who are diagnosed with the chronic respiratory conditions of asthma, rhinitis, sinusitis, to include rhinosinusitis, as long as such conditions manifested within 10 years after separation from the last period of military service that includes a qualifying period of service.

This regulation is based on the Secretary's broad authority under 38 U.S.C. 501(a) to ''prescribe all rules and regulations which are necessary or appropriate to carry out the laws administered by the Department and are consistent with those laws, including— . . . regulations with respect to the nature and extent of proof and evidence . . . in order to establish the right to benefits under such laws.'' The Secretary may create presumptions for conditions based on exposure to particulate matter under Congress's broad delegation of general regulatory authority in 38 U.S.C. 501(a)(1), provided there is a rational basis for the presumptions. *NOVA* v. *Sec'y of Veterans Affairs,* 669 F.3d 1340, 1348 (Fed. Cir. 2012) (''A regulation is not arbitrary or capricious if there is a 'rational connection between the facts found and the choice made.' '' (quoting *Motor Vehicle Mfrs. Ass'n. of the U.S.* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 43 (1983)). For the reasons explained above, the Secretary has determined that such a rational basis exists for the chronic respiratory conditions of asthma, rhinitis, and sinusitis, to include rhinosinusitis.

III. Part 3 Adjudication Regulations Update

VA is amending § 3.159, the regulation regarding VA's duty to assist claimants in developing their claims, specifically by adding new § 3.320 to the current subparagraph that addresses VA's duty to provide medical examinations or obtain medical opinions when it has been established that a veteran has a disease or symptoms of a disease listed in the regulations governing presumptive conditions in §§ 3.309, 3.313, 3.316, and 3.317.

VA is adding new § 3.320 to address presumptive service connection based on exposure to particulate matter for Gulf War veterans. Specifically, in new paragraph (a)(1), this provision outlines that service connection will be granted for the listed diseases for a veteran with a qualifying period of service as long as such disease manifested to any degree (*i.e.,* non-compensable would qualify) within 10 years from separation from the last period of military service that includes a qualifying period of service. This is based on the presumption that a veteran with a qualifying period of service was exposed to fine, particulate matter during that service. New subparagraph (a)(2) lists the three new chronic diseases for presumptive service connection as asthma, rhinitis, and sinusitis, to include rhinosinusitis. Chronic rhinosinusitis will be considered for presumptive service connection if claimed or diagnosed as related to particulate matter exposure. Since chronic rhinosinusitis is also a disease that affects the nasal cavity and paranasal sinuses similar to chronic sinusitis and rhinitis, VA will adjudicate claims for chronic rhinosinusitis under the Diagnostic Code (DC) for sinusitis in 38 CFR 4.97, Schedule of ratings-respiratory system under DCs 6510–6514 as appropriate.

Moreover, these three diseases must not be seasonal or an acute allergic manifestation in nature, as pursuant to 38 CFR 3.380, ''[s]easonal and other acute allergic manifestations subsiding on the absence of or removal of the allergen are generally to be regarded as acute diseases, healing without residuals.''

In the event a claimant does not specifically claim one of the three presumptive diseases by name but references symptoms of a general medical condition such as ''shortness of breath'' or ''respiratory issues'' on claims forms or applications, VA will continue to process and adjudicate such claims to include on the basis of presumptive service connection due to exposure to particulate matter. VA will review and verify the claimant's records, including records of deployment to a qualifying period of service and area. If confirmed, VA will schedule an examination (or medical opinion if/when necessary) to determine if the veteran has a diagnosis for any of the new presumptive diseases and will adjudicate the claim under new § 3.320 accordingly.

In addition, new paragraph (a)(3) provides the presumption that a veteran with a qualifying period of service was exposed to fine, particulate matter in service. And new paragraph (a)(4) establishes the qualifying period of service in Southwest Asia theater of operations as during the Persian Gulf War, as well as Afghanistan, Syria, Djibouti, or Uzbekistan on or after September 19, 2001 during the Persian Gulf War.

Lastly, new paragraph (b) provides the three circumstances under which presumptive service connection will not be granted. VA will not consider a disease to be service connected on a presumptive basis if there is affirmative evidence that shows: (1) The disease was not incurred or aggravated during a qualifying period of service; (2) the disease was caused by a supervening condition or event that happened between the most recent separation from a qualifying period of service and the onset of the disease; or (3) the disease was due to the veteran's own willful misconduct. This new paragraph (b) is consistent with current regulations governing other conditions based on presumptive service connection such as exposure to ionizing radiation, exposure to mustard gas, or based on Gulf War service and disabilities due to undiagnosed illness and medically unexplained chronic multi-symptom illnesses. See 38 CFR 3.311(g), 3.316(b), and 3.317(a)(ii)(7) and (c)(4).

IV. Review of Other Part 3 Adjudication Regulations

On July 30, 2008, Congress passed Public Law 110–289, the Housing and Economic Recovery Act of 2008, of which section 2603 expanded eligibility of specially adapted housing benefits to veterans who are permanently and totally disabled due to severe burn injuries ''as determined pursuant to regulations prescribed by the Secretary.'' On December 18, 2009, VA published in the **Federal Register** (74 FR 67145) a proposed rule to amend §§ 3.809 and 3.809a, the provisions governing specially adapted housing and special home adaptation grants, respectively, to conform with Public Law 110–289. (RIN 2900–AN21) Particularly, VA proposed to add eligibility criteria of severe burn injuries to § 3.809a to be defined as (1) deep partial thickness burns that have resulted in contractures with limitation of motion of two or more extremities or of at least one extremity and the trunk, or (2) subdermal burns that have resulted in contracture(s) with limitation of motion of one or more extremities or the trunk. Although Public Law 110–289 did not specifically address non-dermatological severe burn injuries, VA proposed to add a third eligibility criteria of severe burn injury, defined as residuals of an inhalation injury. VA noted that ''inhalation injuries can result from the same incidents that cause severe burns'' and attributed the breathing of steam or ''toxic inhalants such as fumes, gases, and mists present in a fire environment. Toxic inhalants comprise a variety of noxious gases and particulate matter that are capable of producing local irritation, asphyxiation, and systemic toxicity.'' See 74 FR at 67147. It was also noted that a significant number of individuals with burns to the skin also have inhalational injury, and the presence of inhalational injury is a determinant of mortality. VA concluded that this third eligibility criteria for inhalational injury was a logical outgrowth of section 2306 of Public Law 110–289 that added severe burn injury as a qualifying disability for special home adaptation grants as the law made no mention of inhalation injury.

Taken together, the fact that inhalation injury arose from legislation that only established severe burn injury as a qualifying injury for specially adapted housing and special home adaptation grants and that VA's explanation for adding inhalation injury consistently describes such injury as attributable to combustion or fire environments and events that could cause severe burn injuries, VA concluded that the inhalation injury provision of § 3.809a would only apply to cases where veterans could also be exposed to possible severe burn injury (*e.g.,* firefighting, escaping a burning building, etc.)

With regard to inhalation injuries for special home adaptation grants and PM exposure, VA concludes that the majority of these sources of particulate matter would not immediately put veterans in danger of suffering severe burn injury as particulate matter is ubiquitous in the environment. Therefore, VA will not automatically presume that anyone who is permanently and totally disabled due to a respiratory illness as a result of exposure to particulate matter will automatically qualify for special home adaptation grant (per 38 CFR 3.809a) based on the eligibility criteria of inhalation injury. Instead, the evidentiary record must show that the respiratory illness (or residuals) were due to an event where the possibility of severe burn injury may have occurred.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b)(B) and (d)(3), VA has found that there is good cause to publish this rule without prior opportunity for comment and to publish this rule with an immediate effective date. It is necessary to immediately implement this interim final rule in order to carry out the VA Secretary's decision to address the needs of service members and veterans who have been exposed to airborne hazards, *i.e.,* particulate matter, due to their service in the Southwest Asia theater of operations, Afghanistan, Syria, Djibouti, or Uzbekistan. Delay in the implementation of this rule would be contrary to the public interest.

The new presumptions are entirely pro-claimant in nature. And because VA has a sufficient scientific basis to support the new presumptions, continuing to deny claims that could be granted under the presumption while rulemaking is ongoing would unnecessarily deprive veterans and beneficiaries of benefits to which they would otherwise be entitled and prolong their inability to timely receive benefits. Additionally, this could create risks to beneficiaries' welfare and health that would be exacerbated by any additional delay in implementation. Due to the complexity and the historical scientific uncertainty surrounding these issues of airborne hazard exposures and disease, many veterans who will be affected by this rule have long borne the burden and expense of their disabilities while awaiting the results of research

and investigation. Under these circumstances, imposing further delay on their receipt of benefits, potentially at the risk of their welfare and health, is contrary to the public interest.

Further, the Secretary's decision to extend certain VA-administered benefits to service members and veterans who have been exposed to airborne hazards, *i.e.,* particulate matter, due to their service in the Southwest Asia theater of operations, Afghanistan, Syria, Djibouti, or Uzbekistan requires immediate effect to help them access these benefits without undue delay, particularly given that the COVID–19 pandemic, with its sustained adverse economic consequences, may have reduced or limited their personal resources. For veterans that are not otherwise eligible for health care, these presumptions could result in needed health care eligibility based on service connection. For this reason, delay in implementation of this rule would be contrary to the public interest.

5 U.S.C. 553(d) also requires a 30-day delayed effective date following publication of a rule, except for ''(1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule.'' Pursuant to section 553(d)(3), the Secretary finds that there is good cause to make the rule effective upon publication, for the reasons discussed above.

For the foregoing reasons, and as explained in further detail in the interim final rule, the Secretary of Veterans Affairs is issuing this rule as an interim final rule with an immediate effective date. However, VA will consider and address comments that are received within 60 days of the date this interim final rule is published in the **Federal Register**.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is an economically significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Regulatory Flexibility Act

The Secretary hereby certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). The certification is based on the fact that only individuals, not small entities or businesses, will be affected. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This interim final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This interim final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are 64.101, Burial Expenses Allowance for Veterans; 64.102, Compensation for Service-Connected Deaths for Veterans' Dependents; 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.105, Pension to Veterans, Surviving Spouses, and Children; 64.109, Veterans Compensation for Service-Connected Disability; and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

Congressional Review Act

This regulatory action is a major rule under the Congressional Review Act, 5 U.S.C. 801–808, because it may result in an annual effect on the economy of $100 million or more. In accordance with 5 U.S.C. 801(a)(1), VA will submit to the Comptroller General and to Congress a copy of this regulation and the Regulatory Impact Analysis associated with the regulation. However, for the reasons explained above, VA has found that there is good cause to publish this rule with an immediate effective date, pursuant to 5 U.S.C. 808(2).

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on July 12, 2021 and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 3 as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a).

■ 2. Amend § 3.159 by revising paragraph (c)(4)(i)(B) to read as follows:

§ 3.159 Department of Veterans Affairs assistance in developing claims.

* * * * *

(c) * * *

(4) * * *

(i) * * *

(B) Establishes that the veteran suffered an event, injury or disease in service, or has a disease or symptoms of a disease listed in §§ 3.309, 3.313, 3.316, 3.317, and 3.320 manifesting during an applicable presumptive period provided the claimant has the required service or triggering event to qualify for that presumption; and

* * * * *

■ 3. Add § 3.320 to read as follows:

§ 3.320 Claims based on exposure to particulate matter

(a) *Service connection based on presumed exposure to particulate matter*—(1) *General.* Except as provided in paragraph (b) of this section, a

disease listed in paragraph (a)(2) of this section shall be service connected even though there is no evidence of such disease during the period of service if it becomes manifest to any degree (including non-compensable) within 10 years from the date of separation from military service that includes a qualifying period of service as defined in paragraph (a)(4) of this section.

(2) *Chronic diseases associated with exposure to particulate matter.* The chronic diseases referred to in paragraph (a)(1) of this section are the following:

(i) Asthma.

(ii) Rhinitis.

(iii) Sinusitis, to include rhinosinusitis.

(3) *Presumption of exposure.* A veteran who has a qualifying period of service as defined in paragraph (a)(4) of this section shall be presumed to have been exposed to fine, particulate matter during such service, unless there is affirmative evidence to establish that the veteran was not exposed to fine, particulate matter during that service.

(4) *Qualifying period of service.* The term *qualifying period of service* means any period of active military, naval, or air service in:

(i) The Southwest Asia theater of operations, as defined in § 3.317(e)(2), during the Persian Gulf War as defined in § 3.2(i).

(ii) Afghanistan, Syria, Djibouti, or Uzbekistan on or after September 19, 2001 during the Persian Gulf War as defined in § 3.2(i).

(b) *Exceptions.* A disease listed in paragraph (a)(1) of this section shall not be presumed service connected if there is affirmative evidence that:

(1) The disease was not incurred during or aggravated by a qualifying period of service; or

(2) The disease was caused by a supervening condition or event that occurred between the veteran's most recent departure from a qualifying period of service and the onset of the disease; or

(3) The disease is the result of the veteran's own willful misconduct.

[FR Doc. 2021–16693 Filed 8–4–21; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2020–0489; FRL–8691–02–R3]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Nonattainment New Source Review Requirements for 2015 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Department of Energy and Environment (DOEE) of the District of Columbia (the District). The revision will fulfill the District's Nonattainment New Source Review (NNSR) SIP element requirement for the 2015 8-hour ozone National Ambient Air Quality Standard (NAAQS). EPA is approving the revision to the District of Columbia SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on September 7, 2021.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2020–0489. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Matthew Willson, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–5795. Mr. Willson can also be reached via electronic mail at *Willson.Matthew@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 11, 2021 (86 FR 8734), EPA published a notice of proposed rulemaking (NPRM) for the District of Columbia. In the NPRM, EPA proposed approval of the District's NNSR Certification for the 2015 8-hour ozone NAAQS. The formal SIP revision was submitted by the District on May 5, 2020. Specifically, the District certified that its existing NNSR program, covering the District portion of the Washington, DC–MD–VA Nonattainment Area (Washington Area) for the 2015 8-hour ozone NAAQS, is at least as stringent as the requirements at 40 CFR 51.165, as amended by the final rule titled ''Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements'' (SIP Requirements Rule), for ozone and its precursors. See 83 FR 62998 (December 6, 2018).

On October 1, 2015, EPA promulgated a revised 8-hour ozone NAAQS of 0.070 parts per million (ppm). 80 FR 65292 (October 26, 2015). Under EPA's regulations at 40 CFR 50.19, the 2015 8-hour ozone NAAQS is attained when the three-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentration is less than or equal to 0.070 ppm.

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS based on the three most recent years of ambient air quality data at the conclusion of the designation process. The Washington Area was classified as marginal nonattainment for the 2015 8-hour ozone NAAQS on June 4, 2018 (effective August 3, 2018) using 2014–2016 ambient air quality data. 83 FR 25776. On December 6, 2018, EPA issued the final SIP Requirements Rule, which establishes the requirements that state, tribal, and local air quality management agencies must meet as they develop implementation plans for areas where air quality exceeds the 2015 8-hour ozone NAAQS. 80 FR 65291, October 26, 2015. Areas that were designated as marginal ozone nonattainment areas are required to attain the 2015 8-hour ozone NAAQS no later than August 3, 2021. 40 CFR 51.1303 and 83 FR 10376, March 9, 2018.

Based on initial nonattainment designations for the 2015 8-hour ozone NAAQS, as well as the December 6, 2018 final SIP Requirements Rule, the District was required to develop a SIP revision addressing certain CAA requirements for the Washington Area, and submit to EPA a NNSR Certification SIP or SIP revision no later than 36 months after the effective date of area designations for the 2015 8-hour ozone

NAAQS (*i.e.,* August 3, 2021). See 83 FR 62998 (December 6, 2018). EPA is approving the District's May 5, 2020 NNSR Certification SIP revision for the 2015 8-hour ozone NAAQS.

II. Summary of SIP Revision and EPA Analysis

This rule is specific to the District's NNSR requirements. NNSR is a preconstruction review permit program that applies to new major stationary sources or major modifications at existing sources located in a nonattainment area. The specific NNSR requirements for the ozone NAAQS are located in 40 CFR 51.160 through 51.165.

The District's SIP approved NNSR program, established in Chapters 1 (Air Quality—General Rules) and 2 (Air Quality—General and Nonattainment Area Permits) in Title 20 of the District of Columbia Municipal Regulations (DCMR), applies to the construction and modification of major stationary sources in nonattainment areas. In its May 5, 2020 SIP revision, the District certifies that the versions of 20 DCMR Chapters 1 and 2 approved in the SIP are at least as stringent as the Federal NNSR requirements for the Washington Area. EPA last approved revisions to the District's major NNSR SIP on July 5, 2019. In that action, EPA approved revisions to the District's SIP which made DOEE's NNSR program consistent with Federal requirements. 84 FR 32072, July 5, 2019. No public comments were received on the NPRM.

III. Final Action

EPA is approving the District's May 5, 2020 SIP revision addressing the NNSR requirements for the 2015 8-hour ozone NAAQS for the Washington Area. EPA has concluded that the District's submission fulfills the 40 CFR 51.1114 revisions requirement, meets the requirements of CAA section 110 and 172 and the minimum SIP requirements of 40 CFR 51.165.

IV. Statutory and Executive Order Reviews

A. General Requirements

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

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 4, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action pertaining to the District's NNSR program and the 2015 8-hour ozone NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).).

List of Subjects in 40 CFR Part 52

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

Dated: July 28, 2021.

Diana Esher,

Acting Regional Administrator, Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart J—District of Columbia

■ 2. In § 52.470, the table in paragraph (e) is amended by adding an entry for ''2015 8-Hour Ozone Certification for Nonattainment New Source Review (NNSR)'' at the end of the table to read as follows:

§ 52.470 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* *	* *	*	* *	*
2015 8-Hour Ozone Certification for Nonattainment New Source Review (NNSR).	The District of Columbia	05/05/20	08/05/21, [insert **Federal Register** citation].	

[FR Doc. 2021–16534 Filed 8–4–21; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8360

[18X LLAKF0000 L12200000.DD0000 LXSS002L0000]

Final Supplementary Rules for Public Lands Managed by the Eastern Interior Field Office at the Fairbanks District Office Administrative Site, Fairbanks, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Final supplementary rules.

SUMMARY: The Bureau of Land Management (BLM) is finalizing supplementary rules for all BLM-managed public lands within the Fairbanks District Office administrative site. These rules are necessary to enhance the safety of visitors, protect natural resources, improve recreation experiences and opportunities, and protect public health.

DATES: These supplementary rules are effective September 7, 2021.

ADDRESSES: You may send inquiries by mail, email, or hand delivery. Mail or hand delivery: Michelle Ethun, Fairbanks District Office, Bureau of Land Management, 222 University Avenue, Fairbanks, AK 99709. Email: *EasternInterior@blm.gov* (Include ''final supplementary rules'' in subject line).

FOR FURTHER INFORMATION CONTACT: Michelle Ethun, Fairbanks District Office, Bureau of Land Management, 222 University venue, Fairbanks AK 99709, 907–474–2200. People who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. You can access the FRS 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

The Fairbanks District Office building is located within a densely developed, mixed residential/commercial area of Fairbanks, Alaska, on BLM-managed public lands within the boundaries of the Eastern Interior Field Office along the bank of the Chena River. In addition to visitors to these offices, the public often uses the open space adjacent to the office building to picnic, walk dogs, or access the Chena River. Visitors encounter inconsistent rules regarding appropriate conduct at the Fairbanks District Office administrative site. This inconsistency hampers the BLM's ability to provide a safe visitor experience and minimize conflicts among users.

These final supplementary rules establish a consistent set of rules for the Fairbanks District Office administrative site. Absent such rules, BLM Law Enforcement Rangers face impediments to preventing acts that compromise public health and safety, such as open fires in proximity to office buildings, overnight/long-term occupancy, unattended domestic animals, and unattended vehicles. The highly urbanized nature of the Fairbanks District Office administrative site, and its location in Class C–E airspace on final approach to Fairbanks International Airport as well as the adjacent State Division of Forestry-Interagency Fire helipad, make some uses of public lands inappropriate; for example, no person may operate an aerial drone in a manner that interferes with neighboring Forestry helipads (14 CFR 107.43). In addition, enforcing State laws and/or borough ordinances is administratively more difficult for BLM Law Enforcement Rangers than enforcing established BLM rules. The BLM is establishing these supplementary rules under the authority of 43 CFR 8365.1–6, which authorizes BLM State Directors to establish supplementary rules for the protection of persons, property, and public lands and resources. There are currently no existing supplementary rules for the Fairbanks District Office administrative site. The administrative site is all property and lands encompassed within the land parcels managed by the BLM within the Fairbanks North Star Borough, legal address 222 University Avenue, Fairbanks, AK 99709, described as:

Fairbanks Meridian, Alaska

T. 1 S., R. 1 W.,
Sec. 7, lots 63 and 69.

The area described here aggregates 11.41 acres.

You may obtain a map of the Fairbanks District Office administrative site in Fairbanks, Alaska, by contacting the office (see **ADDRESSES**) or by accessing the following web page. *https://eplanning.blm.gov/eplanning-ui/project/71962/510*.

II. Discussion of Public Comments and Final Supplementary Rules

In general, the BLM uses supplementary rules for permanent, site-specific regulations where general BLM regulations do not meet the specific management needs of a site's unique characteristics. Most common are rules for recreation areas or administrative sites, such as the Fairbanks District Office administrative site. These final supplementary rules apply to 11.41 acres of BLM-managed public lands comprising the BLM Fairbanks District Office administrative site. These final rules address general public conduct and public safety concerns at the BLM facility.

BLM Law Enforcement Rangers will enforce rules only in relation to BLM-managed lands above the mean high water line of the Chena River. Nothing in these final rules imparts any new or special authority or jurisdiction to BLM Law Enforcement Rangers on or within the navigable waters of the State of Alaska or airspace managed by the Federal Aviation Administration. The final rules seek to minimize conflicts with the Fairbanks District Office administrative site's year-round heavy use by employees, volunteers, school groups, contractors, and the public. During the drafting of these rules, which include provisions that address hunting and trapping, the BLM consulted with the Fairbanks Region of the Alaska Department of Fish and Game, which did not object. The Alaska Department of Fish and Game has closed the Chena

River to beaver trapping downstream from its confluence with the Little Chena River by State trapping regulations, and the closure area encompasses the segment of the River's riparian corridor adjoining the BLM Fairbanks District Office administrative site.

Supplementary rules 3–4, 7, and 10–11 are consistent with existing State laws or regulations and municipal ordinances and will facilitate cooperation between BLM Law Enforcement Rangers and local or State authorities. Supplementary rules 1, 5, and 8–9 are new. Supplementary rules 2, 6, and 12–13 implement minor modifications or revisions to existing BLM regulations in order to improve enforcement and better align with the Fairbanks administrative site's urban environment.

The BLM published proposed supplementary rules in the **Federal Register** on November 21, 2017 (82 FR 55340). Publication of the proposed rules started a 60-day public comment period that ended on January 22, 2018. The BLM received 80 written comments on the proposed rule. One comment from a member of the public was supportive of prohibiting hunting and trapping at the administrative site.

The Alaska Department of Fish and Game asked for clarification that the rule would not prohibit the Department from issuing permits for the harvest of nuisance beavers from the Administrative site. The Department has issued such permits along the Chena River, near the Administrative site in the past. The BLM did not make any changes to the supplementary rules in response to Alaska Department of Fish and Game's comment because the rule allows the BLM to provide exemptions for this type of activity. Persons, agencies, municipalities or companies holding a valid special-use permit from the BLM and operating within the scope of their permit are exempt from any of the supplementary rules that are in conflict with the permit. Additionally, the Authorized Officer has discretion to authorize exemptions from the supplementary rules. Therefore, the BLM could exempt a permittee authorized by the Alaska Department of Fish and Game to harvest nuisance beavers from the Administrative site from these supplementary rules either by issuing a BLM special-use permit or by issuing a specific exemption.

The remaining comments are not pertinent to these supplementary rules. The BLM has not revised the rules in response to them.

On its own initiative, the BLM revised the proposed supplementary rules in order to clarify, simplify, and remove duplicative or unnecessary rules. Through this process, the BLM reduced the number of rules from 27 to 13. For example, the proposed rule included three prohibited acts related to weapons and/or firearms. The BLM determined that these were duplicative and that prohibited act 3 is sufficient. The BLM clarified that the definition of ''camping'' is limited to lands above mean high water on the Chena River. The BLM revised the definition of ''explosives'' in order to update the definition's reference to a list of explosive materials published and revised at least annually in the **Federal Register** by the U.S. Department of Justice.

III. Procedural Matters

Executive Order 12866 and 13563, Regulatory Planning and Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. These supplementary rules are not a significant regulatory action and are not subject to review by the Office of Information and Regulatory Affairs under Executive Order 12866.

Executive Order 13563 reaffirms the principles of Executive Order 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. Executive Order 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. The BLM's State Office in Alaska has developed these supplementary rules in a manner consistent with these requirements.

National Environmental Policy Act (NEPA)

These supplementary rules do not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required because the BLM reached a Finding of No Significant Impact (FONSI). Through an interdisciplinary review, the BLM Eastern Interior Field Office prepared an Environmental Assessment (DOI–BLM–AK–F020–2017–0006–EA) and made it available on the BLM Eastern Interior Field Office NEPA register for public inspection on February 14, 2017, along with a draft FONSI. The Environmental Assessment and draft FONSI were available for public review on the BLM NEPA register for 30 days. The BLM's State Office in Alaska did not receive any comments. The Eastern Interior Field Manager signed a Decision Record to move forward with the proposed supplementary rule on March 17, 2017. These documents are available online at *https://eplanning.blm.gov/eplanning-ui/project/71962/510*.

Regulatory Flexibility Act

These supplementary rules will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Small Business Regulatory Enforcement Fairness Act

These supplementary rules do not comprise a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. These supplementary rules:

(a) Do not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Do not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

These supplementary rules merely establish rules of conduct for use of certain public lands and do not affect commercial or business activities of any kind.

Unfunded Mandates Reform Act

These supplementary rules do not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than $100 million per year. These rules do not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Executive Order 12630, Takings

These supplementary rules do not effect a taking of private property or otherwise have taking implications under Executive Order 12630. These

rules do not address property rights in any form, and do not cause the impairment of one's property rights. A takings implication assessment is not required.

Executive Order 13132, Federalism

Under the criteria in section 1 of Executive Order 13132, these rules do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. These rules do not conflict with any Alaska State law or regulation. A federalism summary impact statement is not required.

Executive Order 12988, Civil Justice Reform

These supplementary rules comply with the requirements of Executive Order 12988. Specifically, these rules:

(a) Meet the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meet the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes, through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. The BLM's State Office in Alaska has evaluated these supplementary rules under the Department's consultation policy and under the criteria in Executive Order 13175 and has determined that they have no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required. These rules do not affect Indian resource, religious, or property rights.

Executive Order 13352, Facilitation of Cooperative Conservation

These final supplementary rules will not impede cooperative conservation. The process used to develop these rules considered the interests of persons with ownership or other legally recognized interests in land; properly accommodated local participation in the process; and are consistent with protecting public health and safety.

Information Quality Act

The BLM did not conduct or use a study, experiment, or survey to disseminate information to the public in developing the proposed or final supplementary rules.

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

These supplementary rules do not comprise a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

Paperwork Reduction Act

These supplementary rules do not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act is not required.

Final Supplementary Rules

Author

The principal author of these supplementary rules is Jonathan Priday, Bureau of Land Management Law Enforcement Ranger for the Eastern Interior Field Office. For the reasons stated in the preamble, and under the authority of 43 CFR 8365.1–6, the State Director establishes supplementary rules for public lands managed by the BLM in Fairbanks, Alaska to read as follows:

Definitions

1. *Brandish* means to point, shake, or wave menacingly or to exhibit in an ostentatious manner.

2. *Camping* 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 above mean high water line of the Chena River for the apparent purpose of overnight occupancy.

3. *Command and control of an animal* means that the animal returns immediately to and remains by the side of the handler in response to a verbal command. An animal is not under command and control if the animal approaches or remains within 10 feet of any person other than the handler, unless that person has communicated to the handler by spoken word or gesture that he or she consents to the presence of the animal.

4. *Explosives* means any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion; the term includes, but is not limited to, dynamite and other high explosives, black powder, tannerite, ammonium perchlorate, ammonium nitrate, blasting caps, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters. The term also includes materials on the list published and revised at least annually in the **Federal Register** by the U.S. Department of Justice pursuant to 18 U.S.C. 841(d) and 27 CFR 555.23.

5. *Firearm or other projectile shooting device* means all firearms, air rifles, pellet and BB guns, spring guns, bows or crossbows and arrows, slings, paint ball markers, other instruments that can propel a projectile (such as a bullet, dart, or pellet) by combustion, air pressure, gas pressure, or other means, or any instrument that can be loaded with and fire blank cartridges.

6. *Motorized vehicle* means a vehicle that is propelled by a motor or engine, such as a car, truck, off-highway vehicle, motorcycle, or snowmobile.

7. *Street legal vehicle* means a motorized vehicle that meets standards and requirements identified in Alaska Administrative Code Title 13 and Alaska Statute 28—Motor Vehicles.

8. *Tether* means to restrain an animal by tying to any object or structure by any means, including without limitation a chain, rope, cord, leash, or running line. Tethering does not include using a leash to walk an animal.

9. *Fairbanks District Office administrative site* means the parcels located at Fairbanks Meridian, Alaska, T. 1 S., R. 1 W., sec. 7, lots 63 and 69. The area described aggregates 11.41 acres.

Prohibited Acts

Unless otherwise authorized by the BLM, the following actions are prohibited on lands included within the Fairbanks District Office administrative site:

1. Unauthorized overnight occupancy, use, camping, or parking. Overnight is defined as anytime between the hours of 10 p.m. and 6 a.m.;

2. Starting or maintaining a fire except in approved devices;

3. Using, carrying, or brandishing weapons in violation of Alaska State and/or Federal law;

4. Failing to properly supervise pets or domestic animals as defined below:

a. Failing to restrain pets or domestic animals at all times. Leashes may not exceed six (6) feet in length.

b. Failing to immediately remove or dispose of in a sanitary manner all pet or domestic animal waste;

c. Failing to prevent a pet from harassing, molesting, or injuring

humans, domesticated animals, or wildlife;

d. Leaving unattended and/or tethered domestic animals, except for animals that are inside passenger vehicles;

5. Launching or operating drones or other aerial unmanned vehicles;

6. Possessing or using fireworks and/or explosives;

7. Parking a motorized vehicle in violation of posted restrictions;

8. Leaving property unattended in excess of 24 hours;

9. Hunting or trapping;

10. Disorderly conduct as defined in Alaska Statute 11.61.110;

11. Indecent exposure as defined in Alaska Statute 11.41.458 and/or 11.41.460;

12. Cutting or gathering green trees or parts, or removing down or standing dead wood for any purpose;

13. Unauthorized access to or use of government or employee-owned structures or vehicles.

Exemptions

The following persons are exempt from these supplementary rules: Any Federal, State, local, and/or military employee acting within the scope of their duties; members of any organized rescue or fire-fighting force performing an official duty; and persons, agencies, municipalities or companies holding an existing valid special-use permit and operating within the scope of their permit.

Enforcement

Any person who violates any of these supplementary rules may be tried before a United States Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned for no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, or both. In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of Alaska law.

Chad Padgett,

State Director, Alaska.

[FR Doc. 2021–16535 Filed 8–4–21; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 30, 150 and 153

[Docket No. USCG–2013–0423]

RIN 1625–AB94

2013 Liquid Chemical Categorization Updates

AGENCY: Coast Guard, DHS.

ACTION: Correcting amendments.

SUMMARY: In April 2020, the Coast Guard published a final rule updating the Liquid Chemical Categorization tables, aligning them with the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk and the International Maritime Organization's Marine Environment Protection Committee circulars from December 2012 and 2013. In May 2020, the Coast Guard published amendments to correct minor typographical errors in those regulations. Some minor corrections still need to be made. This document corrects the tables in the final regulations.

DATES: Effective on August 5, 2021.

FOR FURTHER INFORMATION CONTACT: LCDR Daniel Velez, Coast Guard; telephone 202–372–1419, email *Daniel.velez@uscg.mil,* or Dr. Raghunath Halder, Coast Guard; telephone (202) 372–1422, email *Raghunath.Halder@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard published the 2012 Liquid Chemical Categorization Updates interim rule on August 16, 2013 (Volume 78 of the **Federal Register** (FR) at Page 50147). We published a supplemental notice of proposed rulemaking (SNPRM) on October 22, 2015 (80 FR 64191) and published a final rule on April 17, 2020 (85 FR 21660). On May 8, 2020, we published a correcting amendment to that final rule (85 FR 27308).

During development of the May 8, 2020, amendment, the Coast Guard identified errors that prompted a more extensive review. That review has resulted in this correcting amendment, which, among other corrections, re-alphabetizes certain lists of chemicals, removes duplicate chemicals, and resolves minor typographical errors such as italicization. The interim rule, the SNPRM, the final rule, the May 2020 correction, and this document all share the same docket number.

As the errors are not substantive, and correcting them aligns the final text with the stated purpose of the rulemaking, the Coast Guard finds that additional notice and opportunity for public comment is unnecessary under Title 5 of the United States Code (U.S.C.), Section 553(b). For the same reasons, and to forestall any confusion caused by incorrect text, the Coast Guard finds good cause under 5 U.S.C. 553(d) to make the corrected text effective upon publication in the **Federal Register**.

Accordingly, 46 CFR parts 30, 150, and 153 are corrected by making the following correcting amendments:

List of Subjects

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 150

Hazardous materials transportation, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements.

46 CFR Part 153

Administrative practice and procedure, Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

Therefore, the Coast Guard amends 46 CFR parts 30, 150, and 153 as follows.

PART 30—GENERAL PROVISIONS

■ 1. The authority citation for part 30 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703, Department of Homeland Security Delegation No. 0170.1 (II)(92)(a), (92)(b).

■ 2. In § 30.25–1, amend Table 30.25–1 as follows:

■ a. Remove the entry for ''Barium long-chain (C11-C50) alkaryl sulfonate'' and add an entry for ''Barium long-chain (C11-C50) alkaryl sulfonate (alternately sulphonate)'' in its place;

■ b. After the entry for ''*Diethylene glycol ethyl ether, see* Poly(2-8)alkylene glycol monoalkyl (C1-C6) ether.'', add an entry for ''*Diethylene glycol ethyl ether acetate, see* Poly(2-8)alkylene glycol monoalkyl (C1-C6) ether acetate'';

■ c. Redesignate the entries for ''2-Methylpyridine'', ''3-Methylpyridine'', and ''4-Methylpyridine'' to follow the entry for ''Methyl propyl ketone'';

■ d. Remove the entry for ''Nonanoic, Tridecanoic acid mixture'' and add an

entry for ''Nonanoic/Tridecanoic acid mixture'' in its place; and

■ e. Remove the entry for ''Rapeseed acid oil'' .

The additions read as follows:

§ 30.25–1 Cargoes carried in vessels certificated under the rules of this subchapter.

* * * * *

TABLE 30.25–1—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES

Cargo name	IMO Annex II pollution category
* * * * * * *	
Barium long-chain (C11-C50) alkaryl sulfonate ''(alternately sulphonate)	**Y**
* * * * * * *	
Diethylene glycol ethyl ether acetate, see Poly(2-8)alkylene glycol monoalkyl (C1-C6) ether acetate	
* * * * * * *	
Nonanoic/Tridecanoic acid mixture	#
* * * * * * *	

PART 150—COMPATIBILITY OF CARGOES

■ 3. The authority citation for part 150 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; Department of Homeland Security Delegation No. 0170.1. Section 150.105 issued under 44 U.S.C. 3507; Department of Homeland Security Delegation No. 0170.1.

■ 4. Amend Table 1 to Part 150 as follows:

■ a. Remove the entry for ''*Alkyl phenol sulfide (*alternately *sulphide) (C8-C40), see* Alkyl (C8-C40) phenol sulfide'', and add an entry for ''*Alkyl phenol sulfide (*alternately *sulphide) (C8-C40), see* Alkyl (C8-C40) phenol sulfide (alternately *sulphide*)'' in its place;

■ b. Remove the entry for ''*Ammonium lignosulfonate* (alternately *lignosulphonate*) solution, see also Lignin liquor'', and add an entry for ''*Ammonium lignosulfonate* (alternately *lignosulphonate*) *solution, see also* Lignin liquor'' in its place;

■ c. Revise the entries for ''Butyl alcohol (all isomers)'', ''*Coconut oil, see* Oil, edible: Coconut'', ''*Dodecylbenzene, see* Alkyl (C9+)'', ''*Ethylene glycol ethyl ether acetate, see* 2-Ethoxyethyl acetate'', ''*Fuming sulfuric (*alternately *sulphuric) acid, see*'', ''*Gas oil, cracked, see* Oil, misc.: Gas,'', ''*Groundnut oil, see* Oil, edible: Groundnut'', and ''*Jatropha oil, see* Oil, misc.: Jatropha'';

■ d. After the entry for ''Monochlorodifluoromethane'', add an entry for ''*Monoethanolamine, see* Ethanolamine'';

■ e. Revise the entry for ''Nitric acid (70% and over)'';

■ f. Under the entry ''Oil, edible:'', revise the subentries for ''Coconut'' and ''Cotton seed''; and

■ g. Revise the entry for ''Vegetable oils, n.o.s.'', and the subentry, ''*Jatropha oil*''.

The revisions and additions read as follows:

TABLE 1 TO PART 150—ALPHABETICAL LIST OF CARGOES

Alkyl phenol sulfide (alternately *sulphide*) (*C8-C40*), *see* Alkyl (C8-C40) phenol sulfide (alternately *sulphide*).				AKS
* * * * * * *				
Ammonium lignosulfonate (alternately *lignosulphonate*) *solution, see also* Lignin liquor.			ALG	LNL
* * * * * * *				
Butyl alcohol (all isomers)	20	2, 3	BAY	BAN/BAS/BAT/IAL
* * * * * * *				
Coconut oil, see Oil, edible: Coconut		2		OCC (VEO)
* * * * * * *				
Dodecylbenzene, see Alkyl (C9+) benzenes			DDB	AKB
* * * * * * *				
Ethylene glycol ethyl ether acetate, see 2-Ethoxyethyl acetate		2	EGA	EEA
* * * * * * *				
Fuming sulfuric (alternately *sulphuric*) *acid, see* Oleum		2		
* * * * * * *				
Gas oil, cracked, see Oil, misc.: Gas, cracked				GOC
* * * * * * *				
Groundnut oil, see Oil, edible: Groundnut				OGN (VEO)

TABLE 1 TO PART 150—ALPHABETICAL LIST OF CARGOES—Continued

*	*	*	*	*	*	*
Jatropha oil, see Oil, misc.: Jatropha						JTO
*	*	*	*	*	*	*
Monoethanolamine, see Ethanolamine					MEA.	
*	*	*	*	*	*	*
Nitric acid (70% and over)		3	2, 3	NCE		NAC/NCD
*	*	*	*	*	*	*
Oil, edible:						
*	*	*	*	*	*	*
Coconut		34	2	OCC		VEO
*	*	*	*	*	*	*
Cottonseed		34		OCS		VEO
*	*	*	*	*	*	*
Vegetable oils, n.o.s		34		VEO.		
*	*	*	*	*	*	*
Jatropha oil		34		JTO.		
*	*	*	*	*	*	*

* * * * *

■ 5. Amend table 2 to part 150 as follows:

■ a. Remove the following entries:

■ i. Under Group 4, the second entry for ''Acetic Acid.[1]'';

■ ii. Under Group 34, the second (duplicate) entries for ''Polymethylsiloxane.'', ''Polyolefin aminoester salts (molecular weight 2000+)'', ''Polyolefin ester (C28-C250)'', ''Polyolefin phosphorosulfide (alternately phosphorosulphide), barium derivative (C28-C250)'', and ''Poly(20)oxyethylene sorbitan monooleate'' ;

■ iii. Under Group 41, the second (duplicate) entry for ''Methyl tert-pentyl ether'';

■ iv. Under Group 42, ''Nitropropane, Nitroethane mixtures''; and

■ v. Under Group 43, the second (duplicate) entries for ''Alkyl (C8-C10) polyglucoside solution (65% or less)'' and ''Alkyl (C8-C10)/(C12-C14):(60% or more/40% or less) polyglucoside solution (55% or less).'';

■ b. Under Group 0, after

■ i. Remove the entry, ''Alkylbenzene sulfonic (alternately sulphonic) acid (less than 4%)'' and add an entry for ''Alkylbenzene sulfonic (alternately sulphonic) acid (less than 4%)[1]'' in its place ; and

■ ii. After the entry for ''n-Octyl Mercaptan'', add an entry for ''Oleum [1] '';

■ c. Under Group 15:

■ i. After the entry for ''Acrylonitrile.[1]'', add an entry for ''Allyl alcohol [1] ''; and

■ d. Under Group 16, remove the entry for ''Ethylene oxide/Propylene oxide mixture with an Ethylene oxide content not more than 30% by mass)'' and add an entry for ''Ethylene oxide/Propylene oxide mixture with an Ethylene oxide content not more than 30% by mass'' in its place;

■ e. Under Group 17, after the entry for ''Chlorohydrins'', add an entry for ''Chlorohydrins (crude)'';

■ f. Under Group 34:

■ i. Redesignate the entry for ''Calcium long-chain alkyl (C18-C28) salicylate'' to its proper placement in alphabetical order after the entry for ''Calcium long-chain alkyl (C11-C40) phenate.'';

■ ii. Remove the entry for ''Calcium long chain alkyl salicylate (C13 +)''and add an entry for ''Calcium long-chain alkyl salicylate (C13+)'' in its place;

■ iii After the entry for ''Isopropyl acetate'', add an entry for ''Lauric acid'';

■ iv. Under the entry for ''Poly (2-8)alkylene glycol monoalkyl (C1-C6) ether acetate:'', indent the sub-entries, ''Diethylene glycol butyl ether acetate.'', ''Diethylene glycol ethyl ether acetate.'', and ''Diethylene glycol methyl ether acetate.''; and

■ v. Redesignate the entry for ''2,2,4-Trimethyl-1,3-pentanediol-1-isobutyrate'' to follow the entry for ''2,2,4-Trimethyl-1,3-pentanediol diisobutyrate.'';

■ g. Under Group 40:

■ i. Redesignate the entry for ''Diethylene glycol.[1]'' to follow the entry for ''Alkyl (C9-C15) phenyl propoxylate.''; and

■ ii. Remove the entry for ''Diethetylene glycol phenyl ether.r'' by removing ''ether.r'' and, add an entry for ''Diethetylene glycol phenyl ether'' in its place;

■ h. Under Group 42, after the entry for ''Nitroethane'', add an entry for ''Nitroethane (80%)/Nitropropane (20%)''; and

■ i. Under Group 43, after the entry for ''Alkyl (C8-C10)/(C12-C14):(40% or less/60% or more) polyglucoside solution (55% or less)'', add an entry for ''Alkyl (C8-C10)/(C12-C14):(50%/50%) polyglucoside solution (55% or less)''.

The revisions and additions read as follows:

TABLE 2 TO PART 150—GROUPING OF CARGOES

*	*	*	*	*	*	*
0. Unassigned Cargoes.						
*	*	*	*	*	*	*
Alkylbenzene sulfonic (alternately sulphonic) acid (less than 4%) [1].						

TABLE 2 TO PART 150—GROUPING OF CARGOES—Continued

*	*	*	*	*	*	*
	Oleum [1].					
*	*	*	*	*	*	*
15. Substituted Allyls.						
*	*	*	*	*	*	*
	Allyl alcohol [1].					
*	*	*	*	*	*	*
16. Alkylene Oxides.						
*	*	*	*	*	*	*
	Ethylene oxide/Propylene oxide mixture with an Ethylene oxide content not more than 30% by mass.					
*	*	*	*	*	*	*
17. Epichlorohydrins.						
*	*	*	*	*	*	*
	Chlorohydrins (crude).					
*	*	*	*	*	*	*
34. Esters.						
*	*	*	*	*	*	*
	Calcium long-chain alkyl salicylate (C13+).					
*	*	*	*	*	*	*
	Lauric acid.					
*	*	*	*	*	*	*
	Sodium dimethyl naphthalene sulfonate (alternately sulphonate) solution.[1]					
*	*	*	*	*	*	*
40. Glycol Ethers.						
*	*	*	*	*	*	*
	Diethetylene glycol phenyl ether					
*	*	*	*	*	*	*
42. Nitrocompounds.						
*	*	*	*	*	*	*
	Nitroethane (80%)/Nitropropane (20%).					
*	*	*	*	*	*	*
43. Miscellaneous Water Solutions.						
*	*	*	*	*	*	*
	Alkyl (C8-C10)/(C12-C14):(50%/50%) polyglucoside solution (55% or less).					
*	*	*	*	*	*	*

* * * * *

Appendix 1 to Part 150 [Amended]

■ 6. Amend appendix 1 to part 150 in the table in paragraph (a) as follows:
■ a. In the ''Member of reactive group'' column, remove the entry for ''Dimethyl disulfide (0)'' and add an entry for ''Dimethyl disulfide (alternately disulphide) (0)'' in its place; and
■ b. In the ''Member of reactive group'' column, amend entry for ''Ethylenediamene (7)'' by removing its subentry for ''Fatty alcohols (C12-C14).'' in the ''Compatible with'' column and adding an entry for ''Fatty alcohols (C12-C14)(20).'' in its place.

PART 153—COMPATIBILITY OF CARGOES

■ 7. The authority citation for part 153 continues to read as follows:

Authority: 46 U.S.C. 3703; Department of Homeland Security Delegation No. 0170.1. Section 153.40 issued under 49 U.S.C. 5103. Sections 153.470 through 153.491, 153.1100 through 153.1132, and 153.1600 through 153.1608 also issued under 33 U.S.C. 1903 (b).

■ 8. Amend table 2 to part 153 as follows:

■ a. Remove the entry for ''Urea/Ammonium nitrate solution *'' and add an entry for ''Urea/Ammonium nitrate solution'' in its place; and

■ b. Remove the entry for ''Urea/Ammonium phosphate solution ''with pollution category ''Z'' and add in its place an entry for ''Urea/Ammonium phosphate solution'' with pollution category ''Y''.

The additions read as follows:

TABLE 2 TO PART 153—CARGOES NOT RELATED UNDER SUBCHAPTERS D OR O OF THIS CHAPTER WHEN CARRIED IN BULK ON NON-OCEANGOING BARGES

* * * * *

Cargoes	Pollution category
* * * * * * *	
Urea/Ammonium nitrate solution	Z
Urea/Ammonium phosphate solution	Y
* * * * * * *	

Dated: July 16, 2021.

Michael Cunningham,

Chief, Office of Regulations and Administrative Law, U.S. Coast Guard.

[FR Doc. 2021–15740 Filed 8–4–21; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 21–157; RM–11902; DA 21–920; FR ID 41250]

Television Broadcasting Services Eagle River, Wisconsin

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On April 16, 2021, the Media Bureau, Video Division (Bureau) issued a *Notice of Proposed Rulemaking* (*NPRM*) in response to a petition for rulemaking filed by Gray Television Licensee, LLC (Petitioner), requesting the allotment of channel 26 to Eagle River, Wisconsin in the DTV Table of Allotments as the community's second local service. For the reasons set forth in the *Report and Order* referenced below, the Bureau amends FCC regulations to allot channel 26 at Eagle River. The newly allotted channel will be authorized pursuant to the Commission's competitive bidding rules.

DATES: Effective August 5, 2021.

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

SUPPLEMENTARY INFORMATION: The proposed rule was published at 86 FR 22842 on April 29, 2021. The Petitioner filed comments in support of the petition, as required by the Commission's rules, reaffirming its commitment to apply for channel 26 and if authorized, to build a station promptly. No other comments were filed. We believe the public interest would be served by allotting channel 26 at Eagle River, Wisconsin. Eagle River (population 1,398) clearly qualifies for community of license status for allotment purposes. In addition, the proposal would result in a second local service to Eagle River under the Commission's third allotment priority. Moreover, the allotment is consistent with the minimum geographic spacing requirements for new DTV allotments in the Commission's rules, and the allotment point complies with the rules as the entire community of Eagle River is encompassed by the 48 dBμ contour. The Commission obtained Canadian concurrence for the allotment.

This is a synopsis of the Commission's *Report and Order,* MB Docket No. 21–157; RM–11902; DA 21–920, adopted July 27, 2021, and released July 28, 2021. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

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

§ 73.622 Digital television table of allotments.

* * * * *

(i) * * *

Community	Channel No.
* * * * *	
WISCONSIN	
* * * * *	
Eagle River	26, 28
* * * * *	

[FR Doc. 2021–16588 Filed 8–4–21; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 210730–0154]

RIN 0648–BK35

Atlantic Highly Migratory Species; Federal Atlantic Tunas Regulations in Maine State Waters

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

ACTION: Final rule.

SUMMARY: NMFS is adding Maine to the list of states for which NMFS has determined that Federal Atlantic tunas regulations are applicable within state waters, consistent with section 9(d) of the Atlantic Tunas Convention Act (ATCA) and implementing regulations. NMFS is taking this action after considering a request from the Maine Department of Marine Resources (MEDMR) and reviewing the state's relevant laws and regulations. Most states and territories bordering the Atlantic and Gulf of Mexico are currently included in the list, except Maine, Connecticut, and Mississippi. This addition of Maine to the list makes Federal Atlantic tunas regulations—including but not limited to open and closed seasons, retention limits, size limits, authorized gears and gear restrictions, and permitting and reporting requirements—applicable in Maine state waters.

DATES: This final rule is effective on September 7, 2021.

ADDRESSES: Copies of this rule and supporting documents are available from the HMS Management Division website at *https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species.*

FOR FURTHER INFORMATION CONTACT: Carrie Soltanoff (*carrie.soltanoff@noaa.gov*) or Larry Redd, Jr. (*larry.redd@noaa.gov*) at 301–427–8503.

SUPPLEMENTARY INFORMATION: Atlantic tunas fisheries are managed under the authority of ATCA (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 9(d) of ATCA, 16 U.S.C. 971g(d)(2), states that regulations promulgated to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) shall apply within the boundaries of any state bordering the Convention area (the Atlantic Ocean and adjacent seas) if the Secretary of Commerce, after notice and an opportunity for the state to request a formal hearing, determines that such state does not implement regulations consistent with ICCAT recommendations or if state regulations are less restrictive than the Federal regulations or are not effectively enforced. For Atlantic tunas, section 9(d) of ATCA is implemented in the Atlantic HMS regulations at 50 CFR 635.1(b). Atlantic tunas regulations in part 635 include open and closed seasons, retention limits, size limits, authorized gears and gear restrictions, and permitting and reporting requirements, among others. Atlantic tunas managed under the regulations in part 635 are bluefin, bigeye, albacore, yellowfin, and skipjack tunas.

Background

The proposed rule published on April 26, 2021 (86 FR 22006). Additional background on this rulemaking can be found in that proposed rule and is not repeated here. The comment period for the proposed rule closed on June 10, 2021.

This final rule adds Maine to the list of states at § 635.1(b), making Federal Atlantic tunas regulations at 50 CFR part 635 applicable within Maine state waters. In reviewing Maine marine resource laws and regulations regarding tuna fishing in state waters and based on consideration of public comments, NMFS has determined that application of Federal regulations in state waters is warranted, consistent with the State's request and the ATCA criteria. The ATCA criteria require the Secretary of Commerce, after notice and an opportunity for the State to request a formal hearing, to determine whether applicable states implement regulations consistent with ICCAT recommendations and if state regulations are less restrictive than the Federal regulations or are not effectively enforced. NMFS determined that the State does not meet the criteria, particularly given the State's communication that it can no longer ensure that state regulations are consistent with the Federal regulations on an ongoing basis. The State of Maine did not request a formal hearing for this action although NMFS held a public webinar to collect public comment on May 14, 2021.

This rule will provide regulatory consistency; enhance enforcement of season closures, retention limits, size limits, and other Federal tunas regulations in Maine state waters; and address regulation given the State of Maine's observation of increased commercial tuna fishing activity in state waters. This change also will more directly ensure that any tunas landed in state waters are reported in compliance with regulations implementing ICCAT requirements.

Response to Comments

NMFS did not receive written comments on the proposed rule but did receive a comment during the public webinar. NMFS summarizes and responds to the comment below.

Comment 1: MEDMR commented that this action would ensure the long-term viability of their fleet and shore side businesses and ensure sustainable management of the tuna fisheries. MEDMR reiterated their request for this regulatory change and their lack of capacity to stay in sync with the highly dynamic Federal tuna management regulations.

Response: NMFS agrees that Atlantic bluefin tuna management is dynamic, and NMFS agrees that implementation of Federal regulations in Maine state waters will better ensure that tuna fishing activities in Maine state waters are consistent with Federal management measures such as open and closed seasons, retention limits, size limits, authorized gears and gear restrictions, and permitting and reporting requirements. This will simplify and help ensure sustainable management within the ranges of Atlantic tunas stocks.

Changes From the Proposed Rule

The final rule contains no changes from the proposed rule.

Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the 2006 Consolidated Atlantic HMS FMP and its amendments, the Magnuson-Stevens Act, ATCA, and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This final rule does not include any change to a collection of information requirement for purposes of the Paperwork Reduction Act of 1995. The existing collection of information requirements continue to apply under the following OMB Control Numbers: 0648–0327 Atlantic HMS Permit Family of Forms, 0648–0328 Atlantic HMS

Recreational Landings Reports, and 0648–0371 HMS Vessel Logbooks and Cost-Earnings Reports.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: July 30, 2021.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

■ 2. In § 635.1, revise paragraph (b) to read as follows:

§ 635.1 Purpose and scope.

* * * * *

(b) Under section 9(d) of ATCA, NMFS has determined that the regulations contained in this part with respect to Atlantic tunas are applicable within the territorial sea of the United States adjacent to, and within the boundaries of, the States of Maine, New Hampshire, Massachusetts, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Louisiana, and Texas, and the Commonwealths of Puerto Rico and the Virgin Islands. NMFS will undertake a continuing review of State regulations to determine if regulations applicable to Atlantic tunas, swordfish, or billfish are at least as restrictive as regulations contained in this part and if such regulations are effectively enforced. In such case, NMFS will file with the Office of the Federal Register for publication notification of the basis for the determination and of the specific regulations that shall or shall not apply in the territorial sea of the identified State.

[FR Doc. 2021–16670 Filed 8–4–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 210730–0152]

RIN 0648–BK29

Pacific Island Fisheries; Electronic Logbooks for Hawaii and American Samoa Pelagic Longline Fisheries

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

ACTION: Final rule.

SUMMARY: NMFS will require the use of electronic logbooks in the Hawaii pelagic longline fisheries and on Class C and D vessels in the American Samoa pelagic longline fishery. This final rule is intended to reduce human error, improve data accuracy, save time for fishermen and NMFS, and provide more rigorous monitoring and forecasting of catch limits.

DATES: The final rule is effective September 7, 2021.

ADDRESSES: The Western Pacific Fishery Management Council (Council) prepared a regulatory amendment that provides additional information and analyses that support this final rule. Copies are available from the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, or *www.wpcouncil.org.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818, and to *www.reginfo.gov/public/do/PRAMain.*

FOR FURTHER INFORMATION CONTACT: Lynn Rassel, NMFS Pacific Islands Regional Office Sustainable Fisheries, 808–725–5184.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Hawaii shallow-set and deep-set longline fisheries and the America Samoa longline fishery under the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (FEP). The implementing Federal regulations for these fisheries include a suite of conservation and management requirements, including daily catch and effort reporting. The current system of collecting, collating, storing, and entering paper logbook data manually is costly, inefficient, and prone to delays and errors. To correct these inefficiencies, NMFS will require the use of electronic logbooks for vessels with Federal permits for the Hawaii longline fisheries, and Class C and D Federal permits for the American Samoa longline fishery.

Vessel operators will be required to use a NMFS-certified electronic logbook to record catch, effort, location, and other information, and submit it within 24 hours of the completion of a fishing day. In the event of technology malfunction, NMFS will require that logbook data be submitted on paper or electronically within 72 hours of the end of the affected fishing trip.

After this rule's effective date, the requirements will apply to an individual permit holder after NMFS notifies the permit holder of the requirement to submit records electronically and after NMFS assigns an electronic logbook to the vessel. NMFS is responsible for purchasing, providing, and maintaining the tablets, software, and data transmission at no cost to fishery participants. In addition to providing the electronic logbooks, NMFS will provide vessel operators with individual user accounts and train them to use the system properly.

Additional background information on this action is in the proposed rule published in the **Federal Register** on June 9, 2021 (86 FR 30582); we do not repeat it here.

Comments and Responses

On June 9, 2021, NMFS published a proposed rule for public comment (86 FR 30582). The public comment period ended on July 9, 2021. NMFS received comments from two individuals generally supporting the proposed action. The commenters noted that electronic logbooks are effective in reducing data recording and processing errors, and related agency burden.

Changes From the Proposed Rule

There are no changes in this final rule.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the FEP, other provisions of the Magnuson-Stevens Act, and other applicable law.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. NMFS received no comments regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This final rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This rule revises and seeks to extend by 3 years the existing requirements for the collection of information under OMB Control Number 0648–0214 Pacific Islands Logbook Family of Forms by requiring the use of electronic logbooks in Hawaii pelagic longline fisheries and on Class C and D vessels in the American Samoa pelagic longline fishery. A 60-day **Federal Register** notice published on May 25, 2021, provided notification of our intent to extend this information collection (86 FR 28082). This revision is not expected to affect the number of respondents or anticipated responses and is expected to reduce the number of burden hours and burden cost to fishermen. The public reporting burden for completing an electronic logbook form for a completed fishing day is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

We invite the general public and other Federal agencies to comment on proposed and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Written comments and recommendations for this information collection should be submitted on the following website: *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by using the search function and entering either the title of the collection or the OMB Control Number 0648–0214.

Notwithstanding any other provisions of the law, no person is required to respond or, nor shall any person by subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR 665

Administrative practice and procedure, Hawaii, American Samoa, Fisheries, Fishing, Longline, Pacific Islands, reporting and recordkeeping requirements.

Dated: July 29,2021.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 665 as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

■ 1. The authority citation for 50 CFR part 665 continues to read as follows:

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

■ 2. In § 665.14 revise paragraph (b) to read as follows:

§ 665.14 Reporting and recordkeeping.

* * * * *

(b) *Fishing record forms*—(1) *Applicability*—(i) *Paper records.* The operator of a fishing vessel subject to the requirements of § 665.124, § 665.142, § 665.162, § 665.203(a)(2), § 665.224, § 665.242, § 665.262, § 665.404, § 665.424, § 665.442, § 665.462, § 665.603, § 665.624, § 665.642, § 665.662, § 665.801, § 665.905, § 665.935, or § 665.965 must maintain on board the vessel an accurate and complete record of catch, effort, and other data on paper report forms provided by the Regional Administrator, or electronically as specified and approved by the Regional Administrator, except as required in paragraph (b)(1)(ii) of this section or as allowed in paragraph (b)(1)(iv) of this section.

(ii) *Electronic records.* (A) The operator of a fishing vessel subject to the requirements of § 665.801(b) or a Class C or D vessel subject to the requirements of § 665.801(c) must maintain on board the vessel an accurate and complete record of catch, effort, and other data electronically using a NMFS-certified electronic logbook, and must record and transmit electronically all information specified by the Regional Administrator within 24 hours after the completion of each fishing day.

(B) After the Regional Administrator has notified a permit holder subject to this section of the requirement to submit records electronically, and after the vessel has acquired the necessary NMFS-certified equipment, the vessel and any vessel operator must use the electronic logbook. A vessel operator must obtain an individually assigned user account from NMFS for use with the electronic logbook.

(C) Permit holders and vessel operators shall not be assessed any fee or other charges to obtain and use an electronic logbook that is owned and provided by NMFS. If a permit holder or vessel operator subject to this section does not use a NMFS-owned electronic logbook, the permit holder and operator must provide and maintain an alternative NMFS-certified electronic logbook.

(D) If a vessel operator is unable to maintain or transmit electronic records because NMFS has not provided an electronic logbook, or if NMFS or a vessel operator identifies that the electronic logbook has experienced equipment (hardware or software) or transmission failure, the operator must maintain on board the vessel an accurate and complete record of catch, effort, and other data electronically or on paper report forms provided by the Regional Administrator.

(iii) *Recording.* The vessel operator must record on paper or electronically all information specified by the Regional Administrator within 24 hours after the completion of each fishing day. The information recorded must be signed and dated, or otherwise authenticated, in the manner determined by the Regional Administrator, and be submitted or transmitted via an approved method as specified by the Regional Administrator, and as required by this section.

(iv) *State reporting.* In lieu of the requirements in paragraph (b)(1)(i) of this section, the operator of a fishing vessel registered for use under a Western Pacific squid jig permit pursuant to the requirements of § 665.801(g) may participate in a state reporting system. If participating in a state reporting system, all required information must be recorded and submitted in the exact manner required by applicable state law or regulation.

(2) *Timeliness of submission.* (i) If fishing was authorized under a permit pursuant to § 665.142, § 665.242, § 665.442, § 665.404, § 665.162, § 665.262, § 665.462, § 665.662, or § 665.801, and if the logbook information was not submitted to NMFS electronically within 24 hours of the end of each fishing day while the vessel was at sea, the vessel operator must submit the original logbook information for each day of the fishing trip to the Regional Administrator within 72 hours of the end of each fishing trip, except as

allowed in paragraph (b)(2)(iii) of this section.

(ii) [Reserved]

(iii) If fishing was authorized under a PRIA bottomfish permit pursuant to § 665.603(a), PRIA pelagic troll and handline permit pursuant to § 665.801(f), crustacean fishing permit for the PRIA (Permit Area 4) pursuant to § 665.642(a), or a precious coral fishing permit for Permit Area X–P–PI pursuant to § 665.662, the original logbook form for each day of fishing within EEZ waters around the PRIA must be submitted to the Regional Administrator within 30 days of the end of each fishing trip.

(iv) If fishing was authorized under a permit pursuant to § 665.124, § 665.224, § 665.424, § 665.624, § 665.905, § 665.935, or § 665.965, the original logbook information for each day of fishing must be submitted to the Regional Administrator within 30 days of the end of each fishing trip.

* * * * *

[FR Doc. 2021–16650 Filed 8–4–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 210217–0022; RTID 0648–XB273]

Fisheries of the Exclusive Economic Zone Off Alaska; Blackspotted and Rougheye Rockfish in the Central Aleutian and Western Aleutian Districts of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting retention of blackspotted and rougheye rockfish in the Central Aleutian and Western Aleutian districts (CAI/WAI) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the 2021 blackspotted and rougheye rockfish total allowable catch (TAC) in the CAI/WAI of the BSAI has been reached.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), August 2, 2021, through 2400 hours, A.l.t., December 31, 2021.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

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

The 2021 blackspotted and rougheye rockfish TAC in the CAI/WAI of the BSAI is 169 metric tons (mt) as established by the final 2021 and 2022 harvest specifications for groundfish in the BSAI (86 FR 11449, February 25, 2021). In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2021 blackspotted and rougheye rockfish TAC in the CAI/WAI of the BSAI has been reached. Therefore, NMFS is requiring that blackspotted and rougheye rockfish in the CAI/WAI of the BSAI be treated in the same manner as a prohibited species, as described under § 679.21(a), for the remainder of the year, except blackspotted and rougheye rockfish species in the CAI/WAI caught by catcher vessels using hook-and-line, pot, or jig gear as described in § 679.20(j).

Classification

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

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the prohibited retention of blackspotted and rougheye rockfish in the CAI/WAI of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 30, 2021.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

Dated: August 2, 2021.

Jennifer M. Wallace,

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

[FR Doc. 2021–16736 Filed 8–2–21; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 210210–0018]

RTID 0648–XB180

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the West Yakutat District of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the West Yakutat District of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2021 total allowable catch of Pacific ocean perch in the West Yakutat District of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), August 2, 2021, through 2400 hours, A.l.t., December 31, 2021.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

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

The 2021 total allowable catch (TAC) of Pacific ocean perch in the West Yakutat District of the GOA is 1,705 metric tons (mt) as established by the final 2021 and 2022 harvest specifications for groundfish of the GOA (86 FR 10184, February 19, 2021).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2021 TAC of Pacific ocean perch in the West Yakutat District

of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,605 mt, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the West Yakutat District of the GOA. While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

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

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing of Pacific ocean perch in the West Yakutat district of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 30, 2021.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

Dated: August 2, 2021.

Jennifer M. Wallace,

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

[FR Doc. 2021–16737 Filed 8–2–21; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 86, No. 148
Thursday, August 5, 2021

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 959 and 980

[Docket No. AMS–SC–21–0003; SC21–959–2 PR]

Onions Grown in South Texas and Imported Onions; Termination of Marketing Order 959 and Change in Import Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on the proposed termination of the Federal marketing order regulating the handling of onions grown in South Texas and the rules and regulations issued thereunder. A corresponding change would be made to the onion import regulation as required under section 8e of the Agricultural Marketing Agreement Act of 1937.

DATES: Comments must be received by October 4, 2021.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be submitted to the Docket Clerk electronically by Email: *MarketingOrderComment@usda.gov* or internet: *http://www.regulations.gov*. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and can be viewed at: *http://www.regulations.gov*. All comments submitted in response to this proposal will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Abigail Campos, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 291–8614, or Email: *Abigail.Campos@usda.gov* or *Christian.Nissen@usda.gov*.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, or Email: *Richard.Lower@usda.gov*.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes the termination of regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Order No. 959, as amended (7 CFR part 959), regulating the handling of onions grown in South Texas. Part 959 (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The South Texas Onion Committee (Committee) locally administers the Order and is comprised of producers and handlers operating within the production area.

This proposed rule is also issued under section 8e of the Act (7 U.S.C. 608e–1), which provides whenever certain specified commodities, including onions, are regulated under a Federal marketing order, imports of theses commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 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 that 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, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This proposed rule has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. AMS has determined that this proposed rule is unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to a marketing order may file with USDA a petition stating that the marketing order, any provision of the marketing order, or any obligation imposed in connection with the marketing order is not in accordance with law and request a modification of the marketing order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States (U.S.) in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

The Order has been in effect since 1961 and provides the South Texas onion industry with authority for grade, size, quality, pack, and container regulations, research, and promotion programs, as well as authority for inspection requirements. The Order also authorizes reporting and recordkeeping functions required for the operation of the Order. The Order is locally administered by the Committee and is

funded by assessments imposed on handlers.

This rule proposes termination of the Order and the rules and regulations issued thereunder. The Order regulates the handling of onions grown in South Texas. This action is based on the results of a continuance referendum in which producers failed to support the continuation of the Order. USDA believes termination of this program would be appropriate as the Order is no longer favored by industry producers.

Section 959.84(d) of the Order provides that USDA shall conduct a referendum within six years after the establishment of the Order and every sixth year thereafter to ascertain whether continuance is favored by producers. The section also states USDA would consider termination of the Order if less than two-thirds of the producers voting in the referendum and producers of less than two-thirds of the volume of onions represented in the referendum favor continuance. As required by the Order, USDA held a continuance referendum among South Texas onion producers from September 21 through October 13, 2020, to determine if they favored continuation of the program.

Ballots were mailed to 71 producers in the South Texas production area. For the referendum, 23 valid ballots were cast. The results show 57 percent of the producers voting, who produced 53 percent of the volume represented in the referendum, favored continuation of the program. The Order failed to meet both of the two-thirds criteria for continuance, demonstrating a lack of the producer support needed to carry out the objectives of the Act.

Section 608c(16)(A) of the Act provides that USDA terminate or suspend the operation of any order whenever the order or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act. Based on the foregoing, and pursuant to § 608c(16)(A) of the Act and § 959.84 of the Order, USDA is considering termination of the Order. If USDA decides to terminate the Order, trustees would be appointed to conclude and liquidate the affairs of the Committee and would continue in that capacity until discharged by USDA. In addition, USDA would notify Congress of the proposed termination of the Order not later than 60 days before the Order is terminated pursuant to § 608c(16)(A) of the Act.

A notice announcing the results of the referendum was issued on January 5, 2021. On March 15, 2021, USDA suspended collection of assessments under the Order while the proposed termination of the program is being processed by USDA. All other provisions, including grade and size requirements, remain in effect until the Order is terminated.

Section 8e of the Act provides that when certain domestically produced commodities, including onions, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Because this proposed rule would terminate regulations for domestically produced onions, a corresponding change to the imported regulations would also be required.

Minimum grade, size, maturity, and quality requirements for onions imported into the United States are established under § 980.117. Currently, from March 10 through June 4 of each marketing year, imported onions, not including pearl and cipolline onions, must comply with grade, size, quality, and maturity requirements imposed under the Order for South Texas onions. From June 5 through March 9 of each marketing year, and for the entire year for pearl and cipolline onions, imported onions are subject to the requirements of Marketing Order 958, which regulate onions handled in Idaho and Oregon. This proposal would amend § 980.117 by removing the requirements based on the Order for South Texas onions from March 10 through June 4. The import requirements for onions based on Marketing Order 958 would remain in effect from June 5 through March 9, and for the entire year for pearl and cipolline onions.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 70 producers of onions in the production area and approximately 30 handlers subject to regulation under the Order. There are 53 onion importers. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than $1,000,000, and small agricultural service firms are defined as those having annual receipts of less than $30,000,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS), the weighted producer price for South Texas onions during the 2018–19 season was around $9.09 per 50-pound equivalent. The Committee reports total onion shipments were approximately 4.2 million 50-pound equivalents. Using the weighted average price and shipment information, the total 2018–19 crop value is estimated at $38.2 million. Dividing the crop value by the estimated number of producers (70) yields an estimated average receipt per producer of $545,714, so the majority of producers would have annual receipts of less than $1,000,000.

The average handler price for South Texas onions during the 2018–19 season was approximately $11.00 per 50-pound equivalent. Using the average price and shipment information, the total 2018–19 handler crop value is estimated at $46.2 million. Dividing this figure by the number of handlers (30) yields an estimated average annual handler receipts of $1.54 million, which is below the SBA threshold for small agricultural service firms. Thus, the majority of onion producers and handlers may be classified as small entities.

Mexico, Peru, and Canada are the major onion producing countries exporting onions to the United States. In 2019, shipments of onions imported into the United States totaled approximately 543,343 metric tons. Information from USDA's Economic Research Service indicates the dollar value of imported onions was approximately $431 million in 2019. Using this value and the number of importers (53), most importers would have annual receipts of less than $30,000,000 for onions.

This rule proposes termination of the Order and the rules and regulations issued thereunder, regulating the handling of onions grown in South Texas. Section 959.84(d) of the Order requires USDA to conduct a referendum every sixth year to ascertain whether continuance is favored by producers. USDA would consider termination of the Order if less than two-thirds of the producers voting in the referendum and producers of less than two-thirds of the volume of onions represented in the referendum favor continuance. Based on the results of a recent continuance referendum, support for the Order failed to meet the two-thirds requirement by vote or volume indicating continuation

of the program is no longer favored by industry producers. Consequently, USDA is considering termination of the Order. Corresponding changes would also be made to sections of the requirements for onions imported into the United States.

Marketing Orders provide industries with tools to assist producers and handlers in addressing challenges facing the industry. These tools include: Establishing minimum grade, size, quality, and maturity requirements, setting size, capacity, weight, dimensions or pack of the containers, collecting and publish market information useful to growers and handlers, conducting research and promotions, and establishing volume control requirements. Each Marketing Order is different, with the industries deciding the authorities needed and the scope of their Marketing Order. Marketing Orders are approved by producers through referenda and regulate handlers to ensure compliance with all requirements. The authority of a Marketing Order allows each industry to create a local administrative committee that is made up of growers and/or handlers that work collectively to solve industry problems.

Establishing minimum grade, size, quality, and maturity requirements aims to stabilize market conditions for fresh fruit and vegetables. The goal of these requirements is to help balance consumer demands for high quality products and in turn provide better returns to producers for producing and delivering more consistent, quality products to the market. They are also expected to promote repeat consumer purchases and increase demand for a high-quality product.

The Order has been in effect since 1961 and provides the South Texas onion industry with authority for grade, size, quality, pack, and container regulations, research, and promotion programs, as well as authority for inspection requirements. The Order also authorizes reporting and recordkeeping functions required for the operation of the Order. The Order is locally administered by the Committee and is funded by assessments imposed on handlers.

As this change would terminate the Order and all the rules and regulations issued thereunder, the perceived benefits correlated with the Order would be lost. However, there would also be savings by eliminating costs associated with the Order, which include the payment of assessments and costs related to inspection.

A review of the referendum results shows that producers failed to reach the necessary threshold for the vote to pass by either vote or by volume as specified in the Order, indicating the benefits of the program no longer outweigh the costs to handlers and producers. Although marketing order requirements are applied to handlers, the costs of such requirements are often passed on to producers. Termination of the Order, and the resulting regulatory relaxation, could therefore be expected to reduce costs for both producers and handlers.

Pursuant to section 8e of the Act, this action would also modify the onion import regulation (7 CFR 980.117). That regulation currently specifies grade, size, quality, and maturity requirements based on those requirements established under Marketing Order 959. With this change, those requirements would no longer be in effect from March 10 through June 4 of the marketing year. While this change could benefit importers through a reduction in costs, the loss of grade and size requirements both from the domestic production as well as the imported product could negatively impact the onion market.

An alternative to this action would be to maintain the Order and its current provisions. However, the Order requires that a continuance referendum be conducted every sixth year to determine industry support for the program. The results of a recently held producer continuance referendum on the Texas onion program indicated a lack of producer support, indicating that the Order no longer meets the needs of producers and handlers. Therefore, this alternative was rejected, and USDA is considering terminating the Order.

This proposed rule is intended to solicit input and other available information from interested parties on whether the Order should be terminated. USDA will evaluate all available information prior to making a final determination on this matter.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0178 Vegetable and Specialty Crops. Termination of the Order, and the reporting requirements prescribed therein, would reduce the reporting burden on South Texas onion handlers by an estimated 1.83 hours per handler. Handlers would no longer be required to file forms with the Committee, which is expected to reduce industry expenses. This rule would not impose any additional reporting or recordkeeping requirements on either small or large onion handlers.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

The producer referendum was well publicized in the production area, and referendum ballots were mailed to all known producers. As such, producers of South Texas onions had an opportunity to indicate their continued support for the Order. Further, interested persons are invited to submit comments on this proposed rule, including the regulatory and information collection impacts of this proposed action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this proposed rule.

This rule invites comments on the proposed termination of Marketing Order 959, which regulates the handling of onions grown in South Texas. A 60-day comment period is provided to allow interested persons to respond to this proposal. All comments timely received will be considered before a final determination is made on this matter. Termination of the Order provisions would become effective only after a 60-day notification to Congress as required by law.

List of Subjects

7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

7 CFR Part 980

Food grades and standards, Imports, Marketing agreements, Onions, Potatoes, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 959 is proposed to be removed and 7 CFR part 980 is proposed to be amended as follows:

PART 959—[REMOVED]

■ 1. Part 959 is removed.

PART 980—VEGETABLES; IMPORT REGULATIONS

■ 2. The authority citation for 7 CFR part 980 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 3. In § 980.117, revise paragraphs (a) and (b) to read as follows:

§ 980.117 Import regulations; onions.

(a) *Findings and determinations with respect to onions.*

(1) Under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), it is hereby found that:

(i) Grade, size, quality, and maturity regulations have been issued regularly under Marketing Order No. 958, as amended;

(ii) The marketing of onions can be reasonably distinguished by the seasonal categories, *i.e.,* late summer and early spring. The bulk of the late summer crop is harvested and placed in storage in late summer and early fall and marketed over a period of several months extending into the following spring. But the onions harvested from the early spring crop are generally marketed as soon as the onions are harvested. The marketing seasons for these crops overlap;

(iii) Concurrent grade, size, quality, and maturity regulations under the marketing order are expected in future seasons, as in the past.

(2) Therefore, it is hereby determined that: Imports of onions during the June 5 through March 9 period, and the entire year for imports of pearl and cipolline varieties of onions, are in most direct competition with the marketing of onions produced in designated counties of Idaho and Malheur County, Oregon, covered by Marketing Order No. 958, as amended (7 CFR part 958).

(b) *Grade, size, quality, and maturity requirements.* On and after the effective date hereof no person may import onions as defined herein unless they are inspected and meet the following requirements: During the period June 5 through March 9 of each marketing year, and the entire year for pearl and cipolline onions, whenever onions grown in designated counties in Idaho and Malheur County, Oregon, are regulated under Marketing Order No. 958, imported onions shall comply with the grade, size, quality, and maturity requirements imposed under that order.

* * * * *

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2021–16495 Filed 8–4–21; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2021–0052]

RIN 3150–AK63

List of Approved Spent Fuel Storage Casks: NAC International NAC–UMS® Universal Storage System, Certificate of Compliance No. 1015, Amendment No. 8

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its spent fuel storage regulations by revising the NAC International NAC–UMS® Universal Storage System listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 8 to Certificate of Compliance No. 1015. Amendment No. 8 revises the certificate of compliance to add the storage of damaged boiling-water reactor spent fuel, including higher enrichment and higher burnup spent fuel; change the allowable fuel burnup range; expand the boiling-water reactor class 5 fuel inventory that could be stored in the cask; and revise definitions in the technical specifications.

DATES: Submit comments by September 7, 2021. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Submit your comments, identified by Docket ID NRC–2021–0052, at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

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: Bernard White, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–6577; email: *Bernard.White@nrc.gov* or James Firth, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–6628, email: *James.Firth@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Table of Contents:

I. Obtaining Information and Submitting Comments
II. Rulemaking Procedure
III. Background
IV. Plain Writing
V. Availability of Documents

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2021–0052 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–2021–0052. Address questions about NRC dockets to Dawn Forder, telephone: 301–415–3407, email: *Dawn.Forder@nrc.gov.* For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

B. Submitting Comments

Please include Docket ID NRC–2021–0052 in your comment submission. The NRC requests that you submit comments through the Federal rulemaking website

at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

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. Rulemaking Procedure

Because the NRC considers this action to be non-controversial, the NRC is publishing this proposed rule concurrently with a direct final rule in the Rules and Regulations section of this issue of the **Federal Register**. The direct final rule will become effective on October 19, 2021. However, if the NRC receives any significant adverse comment by September 7, 2021, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule, certificate of compliance, or technical specifications.

For a more detailed discussion of the proposed rule changes and associated analyses, see the direct final rule published in the Rules and Regulations section of this issue of the **Federal Register**.

III. Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended, requires that ''[t]he Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the Nuclear Waste Policy Act states, in part, that ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule that added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The casks approved for use under the terms, conditions, and specifications of their certificate of compliance or an amended certificate of compliance pursuant to this general license are listed in § 72.214. The NRC subsequently issued a final rule on October 19, 2000 (65 FR 62581), that approved the NAC International NAC–UMS® Universal Storage System and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance No. 1015.

The NAC International NAC–UMS® Universal Storage System consists of the following components: (1) Transportable storage canister (TSC), which contains the spent fuel; (2) vertical concrete cask, which contains the TSC during storage; and (3) a transfer cask, which contains the TSC during loading, unloading, and transfer operations. Amendment No. 8 revises the certificate of compliance to (1) add the storage of damaged boiling-water reactor spent fuel, including higher enrichment and higher burnup spent fuel; (2) change the allowable fuel burnup range; and (3) expand the boiling-water reactor class 5 fuel inventory that could be stored in the cask; and (4) change definitions in the technical specifications that are associated with the contents of the spent nuclear fuel stored in the cask (*e.g.,* high burnup fuel and initial peak planar-average enrichment).

IV. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31885). The NRC requests comment on the proposed rule with respect to clarity and effectiveness of the language used.

V. Availability of Documents

The documents identified in the following table are available to interested persons, as indicated.

Document	ADAMS Accession No.
Submission of a Request to Amend the U.S. Nuclear Regulatory Commission Certificate of Compliance No. 1015 for the NAC-UMS Cask System, December 18, 2019.	ML20006D749
Application for Amendment No. 8 to the Model No. NAC-UMS Storage Cask—Acceptance Letter, March 17, 2020	ML20076A546

Document	ADAMS Accession No.
NAC International, Submittal of Supplement to Amend the NRC Certificate of Compliance No. 1015 for the NAC–UMS Cask System, April 24, 2020.	ML20122A201
Application for Amendment No. 8 to the Model No. NAC–UMS Storage Cask—Request for Additional Information, June 25, 2020.	ML20170A800
Submission of Responses to the U.S. Nuclear Regulatory Commission Request for Additional Information for Certificate of Compliance No. 1015 for the NAC–UMS Cask System, August 7, 2020.	ML20227A066
Memorandum to J. Cai re: User Need for Rulemaking for Amendment No. 8 Request, February 23, 2021	ML20358A255
Proposed Certificate of Compliance No. 1015 Amendment No. 8, Technical Specifications, Appendix A	ML20358A257
Proposed Certificate of Compliance No. 1015, Amendment No. 8, Technical Specifications Appendix B	ML20358A258
Draft Certificate of Compliance No. 1015 Amendment No. 8	ML20358A256
Certificate of Compliance No. 1015 Amendment No. 8, Preliminary Safety Evaluation Report	ML20358A259

The NRC may post materials related to this document, including public comments, on the Federal Rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2021–0052.

Dated: July 26, 2021.

For the Nuclear Regulatory Commission.

Margaret M. Doane,

Executive Director for Operations.

[FR Doc. 2021–16703 Filed 8–4–21; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 104 and 109

[Notice 2021–11]

Rulemaking Petition: Subvendor Reporting

AGENCY: Federal Election Commission.

ACTION: Rulemaking Petition: Notification of availability.

SUMMARY: On June 29, 2021, the Federal Election Commission received a Petition for rulemaking asking the Commission to amend its existing regulations regarding reporting expenditures and certain other disbursements. The proposed amendments would require political committees and persons who make independent expenditures and electioneering communications to itemize certain payments made by vendors to others on behalf of the reporting entities.

DATES: Comments must be submitted on or before October 4, 2021.

ADDRESSES: All comments must be in writing. Commenters may submit comments electronically via the Commission's website at *http://sers.fec.gov/fosers/,* reference REG 2021–02.

Each commenter must provide, at a minimum, his or her first name, last name, city, and state. All properly submitted comments, including attachments, will become part of the public record, and the Commission will make comments available for public viewing on the Commission's website and in the Commission's Public Records Office. Accordingly, commenters should not provide in their comments any information that they do not wish to make public, such as a home street address, personal email address, date of birth, phone number, social security number, or driver's license number, or any information that is restricted from disclosure, such as trade secrets or commercial or financial information that is privileged or confidential.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Knop, Assistant General Counsel, or Ms. Joanna S. Waldstreicher, Attorney, Office of the General Counsel, at *subvendorreporting@fec.gov*.

SUPPLEMENTARY INFORMATION: On June 29, 2021, the Commission received a Petition for Rulemaking from the Campaign Legal Center and the Center on Science & Technology Policy at Duke University (''Petition''). The Petition asks the Commission to amend its regulations at 11 CFR 104.3(b), 109.10(e), and 104.20(c), to require that persons filing reports under those sections itemize all expenditures or disbursements made on behalf of or for the benefit of the political committee or other reporting person, including those made by an agent, independent contractor, vendor, or subvendor.

The Federal Election Campaign Act (the ''Act'') and Commission regulations require that political committees disclose the name and address of each person to whom expenditures or certain other disbursements aggregating over $200 are made, as well as certain information about each expenditure or disbursement. 52 U.S.C. 30104(b)(5)(A), (b)(6)(B)(v); 11 CFR 104.3(b)(3)(i), (b)(4)(i). The Act and Commission regulations also require that disbursements aggregating over $200 for independent expenditures and electioneering communications similarly be disclosed. 52 U.S.C. 30104(b)(6)(B)(iii), (c)(2)(A); 11 CFR 109.10(e)(1)(ii–iii) (independent expenditures); 52 U.S.C. 30104(f)(2)(C); 11 CFR 104.20(c)(4) (electioneering communications).

The Petition notes that ''if a disclosed vendor subcontracts with a third party, the payment to the subcontractor might not be disclosed,'' Petition at 1, and asserts that ''a substantial portion of FEC-reported political spending now consists of large payments to a small number of consulting firms that disguise where political money is ultimately going.'' Petition at 3. The Petition asserts that this lack of disclosure about the ultimate recipients and purposes of political spending has a number of negative consequences: it ''deprives voters of information they use to assess candidates and cast informed votes,'' Petition at 4; it ''becomes nearly impossible for researchers and academics to monitor digital political ad practices,'' *id.;* it allows reporting entities to ''disguise FECA violations, such as violations of the personal use ban'' and ''evidence of common vendor coordination between an authorized committee and a super PAC,'' Petition at 5; and it can ''provide further cover for so-called 'scam PACs,''' Petition at 6.

The Petition asks the Commission to amend 11 CFR 104.3(b) to require additional disclosure by political committees, by adding a new subparagraph (5) that reads:

> (5)(i) Any person reporting expenditures or disbursements under this section must report expenditures or disbursements made by an agent or independent contractor, including any vendor or subvendor, on behalf of or for the benefit of the reporting person.
>
> (ii) An agent or contractor, including a vendor or subvendor, who makes an expenditure or disbursement on behalf of or for the benefit of a reporting committee or person that is required to be reported under this section shall promptly make known to the reporting committee or person all the information required for reporting the expenditure or disbursement.

Petition at 6–7.

The Petition also asks the Commission to amend sections

109.10(e)(1) and 104.20(c) to add similar language requiring additional disclosure in relation to independent expenditures and electioneering communications, respectively.

The Commission seeks comment on the Petition. The public may inspect the Petition on the Commission's website at *http://sers.fec.gov/fosers/*.

The Commission will not consider the Petition's merits until after the comment period closes. If the Commission decides that the Petition has merit, it may begin a rulemaking proceeding. The Commission will announce any action that it takes in the **Federal Register**.

Dated: July 29, 2021.

On behalf of the Commission.

Shana M. Broussard,

Chair, Federal Election Commission.

[FR Doc. 2021–16614 Filed 8–4–21; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0612; Project Identifier MCAI–2021–00650–R]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to issue a new AD to supersede emergency Airworthiness Directive (AD) 2018–23–52, which applies to all Leonardo S.p.a. Model AW169 and AW189 helicopters. AD 2018–23–52 requires inspecting the nut, cotter pin, lock-wire, and hinge bracket connected to the tail rotor servo-actuator (TRA) feedback lever link, and each connection of the TRA feedback lever link, and repair if necessary. AD 2018–23–52 also requires applying a paint stripe or torque seal on the nut and reporting certain information. Since the FAA issued AD 2018–23–52, the FAA has determined certain inspections and checks of the tail rotor duplex bearings (TR DB), installation of an improved TRA and TR DB, certain other actions, and applicable corrective actions are necessary to address the unsafe condition. This proposed AD would require repetitive inspections of the TRA, repetitive inspections and checks of the TR DB, installation of an improved TRA and TR DB, repetitive installations and checks of thermal strips, replacement of improved TR DB (life limit), and applicable corrective actions, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by September 20, 2021.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For material that is proposed for IBR in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this 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–2021–0612.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0612; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the EASA AD, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0612; Project Identifier MCAI–2021–00650–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued Emergency AD 2018–23–52, Product Identifier 2018–SW–

093–AD, dated November 8, 2018 (Emergency AD 2018–23–52), which applies to all Leonardo S.p.a. Model AW169 and AW189 helicopters. Emergency AD 2018–23–52 requires inspecting the nut, cotter pin, lock-wire, and hinge bracket connected to the TRA feedback lever link, and each connection of the TRA feedback lever link, and repair if necessary. Emergency AD 2018–23–52 also requires applying a paint stripe or torque seal on the nut and reporting certain information. The FAA issued Emergency AD 2018–23–52 to address failure of the TRA feedback lever. This condition could result in loss of tail rotor (TR) control and subsequent loss of control of the helicopter.

Actions Since AD 2018–23–52 Was Issued

Since the FAA issued Emergency AD 2018–23–52, the agency determined certain inspections and checks of the TR DB, installation of an improved TRA and an improved TR DB, certain other actions, and applicable corrective actions are necessary to address the unsafe condition.

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0197, dated September 10, 2020 (EASA AD 2020–0197), to correct an unsafe condition for all Leonardo S.p.A. (formerly Finmeccanica S.p.A., AgustaWestland S.p.A.) Model AW169 and AW189 helicopters.

This proposed AD was prompted by a report of an accident of a Model AW169 helicopter, which was observed to have lost yaw control prior to the accident and a determination that additional actions are necessary to address the unsafe condition identified in Emergency AD 2018–23–52. The FAA is proposing this AD to address failure of the TRA feedback lever. This condition could result in loss of TR control and subsequent loss of control of the helicopter. See EASA AD 2020–0197 for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2020–0197 requires the following actions:

—Repetitive inspections of the slippage marking of the castellated nut installed on the back-end of the affected TRA.
—Repetitive inspections of the roughness and breakaway force of the affected TR DB.
—Repetitive installations of a thermal strip on the spacer next to the TR DB.
—Repetitive checks of the condition of the thermal strip and the indicated temperature.
—Repetitive inspections/checks for particles and additional roughness of the TR DB.
—Installation of an improved TRA.
—Installation of an improved TR DB.
—Repetitive replacements of the improved TR DB (life limit).
—An inspection of an affected TR DB if the thermal strip is detached, partially detached or unreadable.
—Reporting information to the manufacturer.
—Sending parts to the manufacturer.
—Applicable corrective actions.

Corrective actions include accomplishing instructions to address the following findings: Evidence of rotation of an affected TRA nut; thermal strip temperatures that exceed specified values; and any discrepancies found during the inspection of an affected TR DB. Discrepancies include roughness (meaning lack of free and easy rotation), measured breakaway force(s) outside the allowed range, any wear or other damage (including, but not limited to, broken seals), and the presence of particles.

EASA AD 2020–0197 also prohibits (re)installation of an affected TRA and an affected TR DB on a helicopter. EASA AD 2020–0197 also specifies, for certain helicopters, terminating action for the repetitive inspections of the slippage marking of the castellated nut.

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

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that the unsafe condition described previously is likely to exist or develop on other helicopters of these same type designs.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified EASA AD 2020–0197, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed AD and except as discussed under ''Differences Between this Proposed AD and EASA AD 2020–0197.''

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2020–0197 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2020–0197 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2020–0197 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2020–0197. Service information required by EASA AD 2020–0197 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0612 after the FAA final rule is published.

Differences Between This Proposed AD and EASA AD 2020–0197

EASA AD 2020–0197 requires sending parts to the manufacturer. This proposed AD would not require that action.

EASA AD 2020–0197 specifies the earlier revisions of Leonardo S.p.A. Emergency Alert Service Bulletin (EASB) 169–148, Revision D, dated August 4, 2020; and Leonardo S.p.A. EASB 189–237, Revision D, dated August 4, 2020; are acceptable for compliance for certain actions. This proposed AD would not allow credit for the earlier revisions.

Where Note 1 of EASA AD 2020–0197 allows a non-cumulative tolerance of 10 percent to be applied to the compliance times for the actions to allow for synchronization of the required actions with other maintenance tasks, this proposed AD would not allow that tolerance.

Interim Action

The FAA considers this proposed AD to be an interim action and further AD action might follow.

Costs of Compliance

The FAA estimates that this proposed AD affects 10 helicopters of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections and checks	Up to 9 work-hours × $85 per hour = $765, per inspection/check cycle.	$0	Up to $765, per inspection/check cycle.	Up to $7,650, per inspection/check cycle.
Thermal strip installation ...	1 work-hour × $85 per hour = $85, per installation cycle.	$4	$89, per installation cycle	$890, per installation cycle.
Installation of improved TRA and TR DB.	Up to 18 work-hours × $85 per hour = $1,530.	Up to $39,000	Up to $40,530	Up to $405,300.
Replacement of improved TR DB.	10 work-hours × $85 per hour = $850, per replacement cycle.	$1,500	$2,350, per replacement cycle.	$23,500, per replacement cycle.

The FAA estimates that it would take about 1 hour per product to comply with the proposed on-condition reporting requirement in this proposed AD. The average labor rate is $85 per hour. Based on these figures, the FAA estimates the cost of reporting the inspection and check results on U.S. operators to be $85 per product.

The FAA estimates the following costs to do any necessary on-condition inspections and thermal strip installations 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 these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION INSPECTIONS AND INSTALLATIONS

Labor cost	Parts cost	Cost per product
4 work-hours × $85 per hour = $340	$0	$340

The FAA has received no definitive data that would enable the agency to provide cost estimates for the other on-condition actions specified in this proposed AD.

Paperwork Reduction Act

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

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Leonardo S.p.a.: Docket No. FAA–2021–0612; Project Identifier MCAI–2021–00650–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 20, 2021.

(b) Affected ADs

This AD replaces Emergency AD 2018–23–52, Product Identifier 2018–SW–093–AD, dated November 8, 2018 (Emergency AD 2018–23–52).

(c) Applicability

This AD applies to all Leonardo S.p.a. Model AW169 and AW189 helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code 6400, Tail Rotor System.

(e) Unsafe Condition

This AD was prompted by a report of an accident of a Model AW169 helicopter, which was observed to have lost yaw control prior to the accident. The FAA is issuing this AD to address failure of the tail rotor servo-actuator (TRA) feedback lever. This condition could result in loss of tail rotor control and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2020–0197, dated September 10, 2020 (EASA AD 2020–0197).

(h) Exceptions to EASA AD 2020–0197

(1) Where EASA AD 2020–0197 requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(2) This AD does not allow the compliance time tolerance specified in Note 1 of EASA AD 2020–0197.

(3) The initial compliance time for the inspection specified in paragraph (1) of EASA AD 2020–0197 is within the compliance time specified in paragraph (1) of EASA AD 2020–0197, except for Group 1 helicopters on which the inspection identified in paragraph (1) of EASA AD 2020–0197 has not been done, the initial inspection is within 10 hours time-in-service after the effective date of this AD.

(4) The initial compliance time for the inspection specified in paragraph (2) of EASA AD 2020–0197 is within the compliance time specified in paragraph (2) of EASA AD 2020–0197, except for Group 1 and 2 helicopters on which the inspection identified in paragraph (2) of EASA AD 2020–0197 has not been done, the initial compliance time is within 50 hours time-in-service after the effective date of this AD.

(5) The initial compliance time for the installation specified in paragraph (3) of EASA AD 2020–0197 is within the compliance time specified in paragraph (3) of EASA AD 2020–0197, except for Group 1 and 2 helicopters on which the installation identified in paragraph (3) of EASA AD 2020–0197 has not been done, the initial compliance time is within 20 hours time-in-service after the effective date of this AD.

(6) The initial compliance time for the check (inspection) specified in paragraph (4) of EASA AD 2020–0197 is within the compliance time specified in paragraph (4) of EASA AD 2020–0197, except for Group 1 and 2 helicopters on which the check (inspection) identified in paragraph (4) of EASA AD 2020–0197 has not been done, the initial compliance time is within 10 hours time-in-service after the effective date of this AD.

(7) The initial compliance time for the inspection/check specified in paragraph (5) of EASA AD 2020–0197 is within the compliance time specified in paragraph (5) of EASA AD 2020–0197 except for Group 1 and 2 helicopters on which the inspection identified in paragraph (5) of EASA AD 2020–0197 has not been done, the initial compliance time is within 10 hours time-in-service after the effective date of this AD.

(8) Where paragraphs (6), (8), (9), and (11) of EASA AD 2020–0197 specify contacting Leonardo for corrective action instructions, the corrective action instructions must be accomplished in accordance with FAA-approved procedures.

(9) Where paragraphs (9) and (10) of EASA AD 2020–0197 use the term ''discrepancy,'' for this AD, discrepancies include roughness (meaning lack of free and easy rotation), measured breakaway force(s) outside the allowed range specified in the service information identified in paragraphs (2) and (7) of EASA AD 2020–0197, any wear or other damage (including, but not limited to, broken seals), and the presence of particles.

(10) Where paragraph (12) of EASA AD 2020–0197 requires reporting results to the manufacturer ''as required by paragraphs (12.1) and (12.2) of this [EASA] AD'', for this AD, only report the inspection and check results specified in paragraph (12.1) of EASA AD 2020–0197. Submit the report at the applicable time in paragraph (h)(10)(i) or (ii) of this AD.

(i) If the inspection or check was done on or after the effective date of this AD: Submit the report within 2 days after the inspection or check.

(ii) If the inspection or check was done before the effective date of this AD: Submit the report within 2 days after the effective date of this AD.

(11) Where paragraph (13) of EASA AD 2020–0197, and the service information specified in EASA AD 2020–0197, specify returning parts and grease containers to the manufacturer, this AD does not include those requirements.

(12) Where EASA AD 2020–0197 requires compliance from March 20, 2020 (the effective date of EASA AD 2020–0048, dated March 6, 2020), this AD requires using the effective date of this AD.

(13) Where EASA AD 2020–0197 requires compliance from its effective date, this AD requires using the effective date of this AD.

(14) This AD does not allow credit for the actions specified in EASA AD 2020–0197 if those actions were done using the service information specified in paragraphs (h)(14)(i) through (ix) of this AD:

(i) Leonardo S.p.A. Emergency Alert Service Bulletin (EASB) 169–148, dated May 29, 2019;

(ii) Leonardo S.p.A. EASB 169–148, Revision A, dated September 5, 2019;

(iii) Leonardo S.p.A. EASB 169–148, Revision B, dated February 4, 2020;

(iv) Leonardo S.p.A. EASB 169–148, Revision C, dated April 6, 2020;

(v) Leonardo S.p.A. EASB 189–237, dated May 29, 2019;

(vi) Leonardo S.p.A. EASB 189–237, Revision A, dated September 5, 2019;

(vii) Leonardo S.p.A. EASB 189–237, Revision B, dated February 4, 2020;

(viii) Leonardo S.p.A. EASB 189–237, Revision B, dated February 4, 2020, with Errata Corrige;

(ix) Leonardo S.p.A. EASB 189–237, Revision C, dated April 6, 2020.

(15) This AD does not require the ''Remarks'' section of EASA AD 2020–0197.

(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)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(j) Related Information

(1) For EASA AD 2020–0197, 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 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. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0612.

(2) For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.*

Issued on July 27, 2021.

Ross Landes,

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

[FR Doc. 2021–16468 Filed 8–4–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 102 and 177

[USCBP–2021–0025]

RIN 1515–AE63

Non-Preferential Origin Determinations for Merchandise Imported From Canada or Mexico for Implementation of the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: This document provides additional time for interested parties to submit comments on the proposed rule published in the **Federal Register** on July 6, 2021, to amend the U.S. Customs and Border Protection (CBP) regulations regarding non-preferential origin determinations for merchandise imported from Canada or Mexico. Based on a request from the public to provide additional time to prepare comments on the proposed rule, CBP is extending the comment period to September 7, 2021.

DATES: The comment period for the proposed rule published July 6, 2021 (86 FR 35422), is extended. Comments must be received on or before September 7, 2021.

ADDRESSES: You may submit comments, identified by docket number USCBP–2021–0025 by *one* of the following methods:

- Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Due to COVID–19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Due to the relevant COVID–19-related restrictions, CBP has temporarily suspended on-site public inspection of the public comments.

FOR FURTHER INFORMATION CONTACT: *Operational Aspects:* Queena Fan, Director, USMCA Center, Office of Trade, U.S. Customs and Border Protection, (202) 738–8946 or *usmca@cbp.dhs.gov.*

Legal Aspects: Craig T. Clark, Director, Commercial and Trade Facilitation Division, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, (202) 325–0276 or *craig.t.clark@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. U.S. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments that will provide the most assistance to CBP will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information or authority that support such recommended change.

II. Background

On July 6, 2021, U.S. Customs and Border Protection (CBP) published a document in the **Federal Register** (86 FR 35422), that proposes to amend the CBP regulations regarding non-preferential origin determinations for merchandise imported from Canada or Mexico. The document solicited public comments on the proposed rule and requested that commenters submit their comments on or before August 5, 2021.

Extension of Comment Period

In response to the proposed rule published in the **Federal Register**, CBP has received correspondence from the public requesting an extension of the comment period for 30 days. CBP has decided to grant the extension. Accordingly, the comment period for the proposed rule is extended to September 7, 2021.

Dated: August 2, 2021.

Alice A. Kipel,

Executive Director, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection.

[FR Doc. 2021–16753 Filed 8–4–21; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0117]

RIN 1625–AA00

Safety Zones; Hampton Roads Bridge-Tunnel Expansion Project, Hampton/Norfolk, VA

AGENCY: Coast Guard, Homeland Security (DHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish safety zones for certain waters of the Hampton Flats, Willoughby Bay, a defined area between Phoebus Channel and the North Trestle Bridge, and 3 zones around the North Trestle Bridge including the North Island, the South Trestle Bridge including the South Island, and the north and south side of the Willoughby Bay Bridge. This action is necessary to provide for the safety of life on these navigable waters in support of the Hampton Roads Bridge-Tunnel Expansion Project that will take place from 2021 through 2025. This proposed rulemaking would prohibit persons and vessels from being in the safety zones unless authorized by the Captain of the Port Sector Virginia or a designated representative or under conditions specified in this rulemaking. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before September 7, 2021.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0117 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed

rulemaking, call or email LCDR Ashley Holm, Waterways Management Division Chief, Sector Virginia, U.S. Coast Guard; telephone 757–668–5580, email *Ashley.E.Holm@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP U.S. Coast Guard Captain of the Port
DHS Department of Homeland Security
FR Federal Register
HRBT Hampton Roads Bridge-Tunnel
HRCP Hampton Roads Connector Partners
NPRM Notice of proposed rulemaking
NSRA Navigation Safety Risk Assessment
§ Section
U.S.C. United States Code
USCG United States Coast Guard
USACE United States Army Corps of Engineers

II. Background, Purpose, and Legal Basis

In April 2019, the Virginia Department of Transportation (VDOT) awarded the design and construction of the Hampton Roads Bridge-Tunnel (HRBT) Expansion Project to the Hampton Roads Connector Partners (HRCP), as the Design-Build contactor. The HRBT Expansion Project is a major road transport infrastructure project that will create an 8-lane facility with 6 consistent use lanes along 9.9 miles of Interstate 64 (I–64), from Settler's Landing Interchange in Hampton, Virginia, to the Interstate 564 (I–564) interchange in Norfolk, Virginia. To better understand the waterways impact from the project, the USCG and U.S. Army Corps of Engineers (USACE) recommended the submission of a formal Navigation Safety Risk Assessment (NSRA) and Tunnel Construction Plan (TCP) prior to any permit or approval action by the U.S. Army Corps of Engineers.[1] The NSRA identified three key objectives for consideration. The first included potential impacts to current and forecasted vessel traffic directly related to the bridge and tunnel construction including all on-water operations and staging areas. The second aimed to identify the best/least disruptive times to schedule movement of construction-related vessels. Finally, it identified the measures necessary for implementation in order to minimize potential hazards to navigation. On-water construction activities are expected to last approximately 5 years (2021–2025). In support of construction efforts, multiple surface craft will be necessary on-site, transiting to and from, as well as pre-staged, to ensure continued operations are maintained. The increase in waterborne traffic in the vicinity of construction areas and staging areas will introduce hazards to waterways users prior to and throughout the duration of the construction project. Specific hazards during the construction project include the proximity of dozens of construction-related vessels in the bridge area and fleeting areas, including material barges and construction equipment barges. In addition, construction of navigable spans by this equipment, as well as construction lighting and loud construction activity noises will make normal passage through the bridge areas unsafe except in areas specifically established as safe transit corridors by the project contractors, HRCP. The Sector Virginia Captain of the Port (COTP) has determined that these potential hazards associated with the HRBT Expansion Project will be a safety concern for anyone transiting in the vicinity of on-water construction activities related to the project. To discuss these safety concerns, representatives of the HRCP along with the COTP's staff conducted a series of outreach meetings. These meetings covered the HRBT Expansion Project and the notional safety zones that would mitigate the hazards discussed above. Due to the COVID–19 pandemic, those outreach meetings were conducted virtually on May 5th, 6th, and 7th. They were announced beforehand by a marine safety information bulletin [2] issued by the COTP, which is distributed to over 1,000 subscribed maritime stakeholders by email, along with direct email notification to community organizations in the coastal areas of the cities of Norfolk and Hampton, Virginia, which are the two cities in the immediate area of the construction activity. Twenty-six individuals in addition to Coast Guard personnel participated in the meetings. The feedback received was consistent that the HRBT Expansion Project would create hazards to navigation for recreational vessels and that the suggested safety zones would help mitigate the risks. Additionally, community members expressed support that HRCP would have the ability to designate safe transit corridors through the South Trestle Bridge and Willoughby Bay Bridge to ensure that coastal property owners could still access the waters of Hampton Roads and southern Chesapeake Bay during the duration of the construction project. The text of the proposed regulation has been drafted to incorporate feedback from these sessions.

The purpose of this rulemaking is to ensure the safety of waterways users on the navigable waters within the vicinity of the HRBT Expansion Project during the course of this multi-year construction project. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP is proposing to establish multiple safety zones to promote safety to waterways users during the HRBT Expansion Project. The Coast Guard currently anticipates the need for 6 safety zones. The proposed safety zones will be used to accommodate pre-staged waterborne equipment and establish buffer zones around two marine staging areas, one safe harbor in case of anticipated severe weather, and the marine construction work sites expected in the vicinity of the North Trestle Bridge and North Island, South Trestle Bridge and South Island and the north and south side of the Willoughby Bay Bridge.

The first safety zone (*Zone 1:* Hampton Flats Mooring Area) would be established in the Hampton Flats covering a mooring/staging area to accommodate 6 barges. Specifically, the first safety zone would cover all waters of the Hampton Flats, from surface to bottom, encompassed by a line connecting the following points beginning at 36°59′40.41″ N, 76°22′10.66″ W, thence to 37°00′01.84″ N, 76°21′01.69″ W, thence to 36°59′52.62″ N, 76°20′57.23″ W, thence to 36°59′31.19″ N, 76°22′06.20″ W, and back to the beginning point. The Hampton Flats Mooring Area would provide critical staging capability necessary to the project. Once the HRCP begins the installation of mooring buoys within the mooring area, the public would be restricted entry or mooring within the safety zone. Mariners would be required to observe lighted marker buoys along the perimeter and at each of the corners marking the safety zone. In the event of inclement weather, this mooring/staging area would not be able to be used for safe refuge.

The second safety zone (*Zone 2:* Phoebus Safe Harbor Area) would be established as a safe harbor area between Phoebus Channel and the North Trestle Bridge in the event of anticipated severe weather. Specifically, all waters west of the Phoebus Channel, from surface to bottom, encompassed by

[1] *See* Memorandum of Agreement between the United States Army Corps of Engineers and the United States Coast Guard, dated June 2, 2000 (available at: *https://usace.contentdm.oclc.org/utils/getfile/collection/p16021coll11/id/2518*).

[2] *See* USCG Sector Virginia Marine Safety Information Bulletin #20–113 (available at *https://content.govdelivery.com/accounts/USDHSCG/bulletins/289cb80*).

a line connecting the following points beginning at 37°00′34.26″ N, 76°19′10.58″ W, thence to 37°00′23.97″ N, 76°19′06.16″ W, thence to 37°00′22.52″ N, 76°19′11.41″ W, thence to 37°00′32.81″ N, 76°19′15.81″ W, and back to the beginning point. While this proposed rule is effective, no vessel or person would be permitted to anchor within the safety zone during announced enforcement periods without first obtaining permission from the COTP or designated representative. Such announcements would be made by Sector Virginia Broadcast Notice to Mariners and broadcasts on VHF–FM radio. During enforcement periods, mariners would be required to observe lighted marker buoys along the perimeter and at each of the corners marking the safety zone.

The third safety zone (*Zone 3:* Willoughby Safe Harbor/Mooring Area) would be established as a mooring area/safe harbor area in Willoughby Bay. Specifically, all waters of Willoughby Bay, from surface to bottom, encompassed by a line connecting the following five points beginning at 36°57′48.68″ N, 76°17′08.20″ W, thence to 36°57′44.84″ N, 76°16′44.48″ W, thence to 36°57′35.31″ N, 76°16′42.80″ W, thence to 36°57′28.78″ N, 76°16′51.75″ W, thence to 36°57′33.17″ N, 76°17′19.43″ W, and back to the beginning point. Once the HRCP begins the installation of mooring buoys within the mooring area, the public would be restricted entry or mooring within the safety zone unless permission from the COTP, HRCP, or their designated representative is granted on a case-by-case basis. Mariners would be required to observe lighted marker buoys along the perimeter and at each of the corners marking the safety zone.

The fourth safety zone (*Zone 4:* North Trestle Bridge and North Island) would be established from surface to bottom for the safety of waterways users in the vicinity of ongoing construction activity on the east and west sides of the Hampton Roads Bridge-Tunnel's north bridge trestle and North Island. No vessel or person at any time would be permitted within the fixed safety zone, 300 feet from the east or west side of the North Trestle Bridge or the North Island. All mariners attempting to enter or depart the Hampton Creek Approach Channel or the Phoebus Channel in the vicinity of the North Island would be required to proceed with extreme caution and maintain a safe distance from construction equipment. Passing arrangements, if necessary, would be allowed to be requested from the on-site foreman via VHF Channel 13 and 16 at any time.

The fifth safety zone (*Zone 5:* South Trestle Bridge and South Island) would be established, from surface to bottom, 300 feet from the east or west side of the South Trestle Bridge or the South Island. This zone is needed for the safety of waterways users in the vicinity of ongoing construction activity on the east and west sides of the Hampton Roads Bridge-Tunnel's south bridge trestle and South Island. No vessel or person at any time would be permitted within the fixed safety zone without permission of the COTP or HRCP, or their designated representatives. HRCP may establish and post visual identification of safe transit corridors that vessels may use to freely proceed through the safety zone. All mariners attempting to enter or depart the Willoughby Bay Approach Channel in the vicinity of the South Island would be required to proceed with extreme caution and maintain a safe distance from construction equipment.

The sixth safety zone (*Zone 6:* Willoughby Bay Bridge) would be established, from surface to bottom, within 50 feet of the north side and 300 feet of the south side of the Willoughby Bay Bridge. This safety zone is needed for the safety of waterways users in the vicinity of ongoing construction activity on the north and south sides of the Willoughby Bay Bridge. No vessel or person may enter or remain in the safety zone without permission of the COTP, HRCP, or designated representative, except that vessels are allowed to transit through marked safe transit corridors that HRCP shall establish for the purpose of providing navigation access for residents located north of the Willoughby Bay Bridge through the safety zone. All mariners attempting to enter or depart residences or commercial facilities north of the Willoughby Bay Bridge through the safe transit corridors or other areas of the safety zone when granted permission shall proceed with caution and maintain a safe distance from construction equipment. Mariners requesting to transit through other areas of the safety zone may do so at any time by contacting the on-site foreman via VHF Channel 13 and 16.

The full proposed regulatory text appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on a comprehensive marine traffic survey conducted for all current and forecasted vessel traffic in the vicinity of the HRBT Expansion Project. The survey was used to inform mitigation strategies, minimize disruptions to navigation, reduce risks of marine casualties and determine the size, location, duration and time-of-day of the recommended safety zones.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator because the ability to transit safely around or through the impacted area will be ensured.

The Coast Guard is aware that there are some small entities who operate commercial fishing vessels that do fish and set traps in some or all of the proposed safety zones. There is a possibility that for a very small number of entities the economic impact of this proposed rule caused by exclusion from the safety zone areas they typically fish could constitute a significant economic impact. However, the Coast Guard concludes that the number of small entities significantly affected would not be substantial.

If you think that your business, organization, or governmental

jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

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 proposed rule. If the proposed rule affects 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed 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 analyzed this proposed rule under that Order and determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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 proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We analyzed this proposed 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 made a preliminary determination 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 proposed rule involves 6 safety zones that will be activated for the duration of the HRBT Expansion Project. Normally such actions are 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 preliminary 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. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

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.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's Correspondence System of Records notice (84 FR 48645, September 26, 2018).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

Prior to this notice, HRCP conducted several maritime community outreach meetings, with the most recent being held virtually on May 6th, 7th, and 8th, 2020 as announced by public website postings and electronic mailing list distributions, and email. No further public meetings are anticipated at this time. Any public meetings held to discuss this rulemaking would be hosted in-person, virtually, or a combination thereof, and would be announced by website postings and emailed announcements. For information on facilities or services for individuals with disabilities or to request special assistance, call or email the person named in the **FOR FURTHER INFORMATION CONTACT** section, above.

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 is proposing to amend 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 § 165.519 to read as follows:

§ 165.519 Safety Zones; Hampton Roads Bridge-Tunnel Expansion Project, Hampton/Norfolk, VA.

(a) *Definitions.* As used in this section, *designated 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 designated by or assisting the Captain of the Port Virginia in the enforcement of the safety zone. The term also includes an employee or contractor of Hampton Roads Connector Partners (HRCP) for the sole purposes of designating and establishing safe transit corridors, to permit passage into or through these safety zones, or to notify vessels and individuals that they have entered a safety zone and are required to leave.

(b) *Locations and zone-specific requirements.*

(1) *Zone 1, Hampton Flats Mooring Area.*

(i) Location: All waters of the Hampton Flats, from surface to bottom, encompassed by a line connecting the following points beginning at 36°59′40.41″ N, 76°22′10.66″ W, thence to 37°00′01.84″ N, 76°21′01.69″ W, thence to 36°59′52.62″ N, 76°20′57.23″ W, thence to 36°59′31.19″ N, 76°22′06.20″ W, and back to the beginning point.

(ii) Requirements: No vessel or person may enter or remain in the safety zone without permission of the COTP, HRCP, or designated representative. Mariners must observe lighted marker buoys along the perimeter and at each of the corners marking the safety zone.

(2) *Zone 2, Phoebus Safe Harbor Area.*

(i) Location: All waters west of the Phoebus Channel, from surface to bottom, encompassed by a line connecting the following points beginning at 37°00′34.26″ N, 76°19′10.58″ W, thence to 37°00′23.97″ N, 76°19′06.16″ W, thence to 37°00′22.52″ N, 76°19′11.41″ W, thence to 37°00′32.81″ N, 76°19′15.81″ W, and back to the beginning point.

(ii) Requirements: No vessel or person may enter or remain in the safety zone during announced enforcement periods without permission of the COTP, HRCP, or designated representative. Such enforcement periods will be announced by Sector Virginia Broadcast Notice to Mariners and broadcasts on VHF–FM radio. During enforcement periods, mariners shall observe lighted marker buoys along the perimeter and at each of the corners marking the safety zone.

(3) *Zone 3, Willoughby Bay Mooring Area.*

(i) Location: All waters of Willoughby Bay, from surface to bottom, in the area encompassed by a line connecting the following points beginning at 36°57′48.68″ N, 76°17′08.20″ W, thence to 36°57′44.84″ N, 76°16′44.48″ W, thence to 36°57′35.31″ N, 76°16′42.80″ W, thence to 36°57′28.78″ N, 76°16′51.75″ W, thence to 36°57′33.17″ N, 76°17′19.43″ W, and back to the beginning point.

(ii) Requirements: No vessel or person may enter or remain in the safety zone without permission of the COTP, HRCP, or designated representative. Mariners must observe lighted marker buoys along the perimeter and at each of the corners marking the safety zone.

(4) *Zone 4, North Highway Bridge Trestle and North Island.*

(i) Location: All waters, from surface to bottom, located within 300 feet of the east or west side of the Hampton Roads Bridge-Tunnel's north highway bridge trestle, including North Island, to the shore of the City of Hampton. No vessel or person may enter or remain in the safety zone without permission of the COTP, HRCP, or designated representative.

(ii) Requirements: All mariners attempting to enter or depart the Hampton Creek Approach Channel or the Phoebus Channel in the vicinity of the North Island must proceed with extreme caution and maintain a safe distance from construction equipment.

(5) *Zone 5, South Highway Bridge Trestle and South Island.*

(i) Location: All waters, from surface to bottom, located within 300 feet from the east or west side of the Hampton Roads Bridge-Tunnel's south highway bridge trestle, including South Island, to the shore of the City of Norfolk.

(ii) Requirements: No vessel or person may enter or remain in the safety zone without permission of the COTP, HRCP, or designated representative. HRCP may establish and post visual identification of safe transit corridors that vessels may use to freely proceed through the safety zone. All mariners attempting to enter or depart the Willoughby Bay Approach Channel in the vicinity of the South Island shall proceed with extreme caution and maintain a safe distance from construction equipment.

(6) *Zone 6, Willoughby Bay Bridge.*

(i) Location: All waters, from surface to bottom, located along the Willoughby Bay Bridge highway trestle and extending 50 feet to the north side of the bridge and 300 feet to the south side of the bridge along the length of the highway trestle, from shore to shore within the City of Norfolk.

(ii) Requirements: No vessel or person may enter or remain in the safety zone without permission of the COTP, HRCP, or designated representative, except that vessels are allowed to transit through marked safe transit corridors that HRCP shall establish for the purpose of providing navigation access for residents located north of the Willoughby Bay Bridge through the safety zone. All mariners attempting to enter or depart residences or commercial facilities north of the Willoughby Bay Bridge through the safe transit corridors or other areas of the safety zone when granted permission shall proceed with caution and maintain a safe distance from construction equipment.

(c) *General requirements.* (1) Under the general safety zone regulations in subpart C of this part, no vessel or person may enter or remain in any safety zone described in paragraph (b) of this section unless authorized by the COTP, HRCP, or designated representative. If a vessel or person is notified by the COTP, HRCP, or designated representative that they have entered one of these safety zones without permission, they are required to immediately leave in a safe manner following the directions given.

(2) Mariners requesting to transit any of these safety zones must first contact the HRCP designated representative, the on-site foreman, via VHF–FM channels 13 and 16. If permission is granted, mariners must proceed at their own risk and strictly observe any and all instructions provided by the COTP, HRCP, or designated representative to the mariner regarding the conditions of entry to and exit from any location within the fixed safety zones.

(d) *Enforcement.* The Sector Virginia COTP may enforce this regulation and may be assisted by any Federal, state, county, or municipal law enforcement agency.

Dated: July 15, 2021.

Samson C. Stevens,

Captain, U.S. Coast Guard, Captain of the Port Virginia.

[FR Doc. 2021–16198 Filed 8–4–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 575

[Docket No. NHTSA–2020–0067]

RIN 2127–AL92

Standard Reference Test Tire

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes amendments to several Federal motor vehicle safety standards and consumer information regulations to update the standard reference test tire (SRTT) used therein. The SRTT is used in those standards and regulations as a baseline tire to rate tire treadwear, define snow tires based on traction performance, and evaluate pavement surface friction. This proposed rule is necessary because the only manufacturer of the currently referenced SRTT ceased production of the tire. Referencing a new SRTT ensures the availability of a test tire for testing purposes.

DATES: Submit comments on or before September 7, 2021.

ADDRESSES: You may submit comments electronically to the docket identified in the heading of this document by visiting the following website:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Alternatively, you can file comments using the following methods:

- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9826 before coming.
- *Fax:* (202) 493–2251.

Regardless of how you submit your comments, you should mention the docket number identified in the heading of this document.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

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.* In order 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.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: You may contact Hisham Mohamed, Office of Crash Avoidance Standards, by telephone at (202) 366–0307 or David Jasinski, Office of the Chief Counsel, by telephone at (202) 366–2992. The mailing address of both of these officials is: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

This rulemaking addresses the standard reference test tire (SRTT) manufactured according to specifications set forth in an ASTM International standard, E1136, ''Standard Specification for P195/75R14 Radial Standard Reference Test Tire'' (14-inch SRTT). The 14-inch SRTT is a size P195/75R14 all-season steel-belted radial tire. The dimensions, weight, materials, and other physical properties of the tire are specified in E1136. The tire is not intended for general use, but as the name indicates, is used for testing.

The 14-inch SRTT was first introduced in the 1980s. The 14-inch SRTT was manufactured by one company, Michelin North America, Inc (Michelin) and was sold under its Uniroyal brand. NHTSA uses the 14-inch SRTT to evaluate tire treadwear performance [1] by comparing a candidate tire's performance to the performance of the SRTT in a particular performance test. NHTSA also uses the 14-inch SRTT to evaluate test surface friction [2] for safety standards relating to braking because the narrow specifications for the tire (size, component materials, etc.) ensure consistent, repeatable performance.

NHTSA first incorporated the 14-inch SRTT into the Federal Motor Vehicle Safety Standards (FMVSSs) in a 1995 rule adopting FMVSS No. 135, the light vehicle braking standard.[3] Previously, NHTSA had used skid number to define the road test surface in the light vehicle braking test. Testing a surface to determine skid number involved using a locked wheel. However, modern anti-lock brake systems (ABS) are designed to achieve maximum friction prior to a wheel becoming locked and the tire skidding. An anti-lock brake system prevents wheel lockup by modulating a vehicle's brakes at a point just before the wheels would lock up. Consequently, in the 1995 final rule, NHTSA adopted ASTM method E1337, ''Standard Test Method for Determining Longitudinal Peak Braking Coefficient (PBC) of Paved Surfaces Using Standard Reference Test Tire,'' as the means for evaluating test surfaces.[4] ASTM E1337 measures the peak braking force prior to wheel lockup, which corresponds to the behavior of an anti-lock brake system. ASTM E1337 specifies the use of the E1136 SRTT in order to ensure that variability in tire size, material, or construction does not affect the evaluation of test surfaces.

Over time, the evaluation of a test surface using the ASTM E1337 test method and the E1136 SRTT was incorporated into the heavy vehicle braking standards (FMVSS Nos. 105 and 121), the light and heavy vehicle electronic stability control standards (FMVSS Nos. 126 and 136), the motorcycle braking standard (FMVSS No. 122), and the low-speed vehicle standard (FMVSS No. 500).[5]

The use of the 14-inch SRTT is also incorporated into the definition of a ''snow tire'' in FMVSS No. 139. Specifically, a ''snow tire'' is defined as a tire that attains a traction index greater than or equal to 110 compared to the 14-inch SRTT when using the ASTM F1805 snow traction test. The ASTM F1805 snow traction test measures the driving traction of tires while traveling in a

[1] 49 CFR 575.104.

[2] 49 CFR 571.105, 571.121, 571.122, 571.126, 571.135, 571.136, 571.139, 571.500.

[3] 60 FR 6411, 6415–17 (Feb. 2, 1995).

[4] Another reason for adopting the peak braking force related to the variability associated with determining skid number. That matter was discussed in more detail in NHTSA's earlier proposals to require heavy vehicles to be equipped with anti-lock brake systems. See 49 FR 20465 (May 14, 1984); 49 FR 28962 (July 17, 1984).

[5] ASTM E1337 is also incorporated by reference into 49 CFR 575.106, which are the provisions related to a new tire consumer information program. However, the test procedures in 49 CFR 575.106 are not currently used pending publication of a proposed and final rule establishing the remaining aspects of the consumer information program. See 75 FR 15893 (Mar. 30, 2010). Therefore, this proposal does not address 49 CFR 575.106. In a proposal implementing the remaining aspects of that tire consumer information program, NHTSA would address the issues discussed in this proposal.

straight line on snow- and ice-covered surfaces. Tires that meet the definition of ''snow tires'' are subject to less stringent performance test requirements compared to other tires subject to FMVSS No. 139.[6]

The SRTT is also used as part of the Uniform Tire Quality Grading Standards (UTQGS), an information program to assist consumers in making informed decisions when purchasing tires. The UTQGS apply to passenger car tires and require motor vehicle and tire manufacturers and tire brand name owners to provide consumers with information about their tires' relative performance regarding treadwear, traction, and temperature resistance.

The 14-inch SRTT is used as part of the determination of a tire's UTQG treadwear rating. As part of the UTQG test procedures, treadwear is measured by running the tires being tested (called candidate tires) in convoys over a 400-mile course of public roads near San Angelo, Texas. The performance of tires over this course can change daily due to variability in the road surface, temperature, humidity, and precipitation. To compensate for changes in condition of the test course, candidate tires are tested concurrently with course monitoring tires (CMTs).

NHTSA has used the 14-inch SRTT as the exclusive CMT since 1991. CMTs must be not more than one year old at the time of commencement of the test and must be used within two months from being removed from storage in order to prevent variability resulting from aging of the CMT. The performance of the CMT is used to determine the base course wear rate (BCWR) by running four-vehicle convoys equipped with 16 CMTs for 6,400 miles over the test course four times per year. [7] The wear rate of the CMT over the prior four quarterly CMT test runs are averaged to calculate the BCWR, which is published in Docket No. NHTSA–2001–9395. The BCWR is used to determine a course severity adjustment factor, which is applied to the comparison between the candidate tires and CMTs to determine a tire's rating.

II. Proposal To Replace 14-Inch SRTT With 16-Inch SRTT

This proposal would amend NHTSA's safety standards and regulations to no longer reference the 14-inch SRTT. Because of technological advancements in the development of tires and the general trend of increasing rim diameter sizes since the 1980s, the size and materials of the 14-inch SRTT are no longer representative of modern tires sold in the U.S. Further, Michelin has ceased production of the 14-inch SRTT because it has become difficult for Michelin to obtain the materials necessary to manufacture the SRTT.[8] Thus, NHTSA seeks to reference a different standard reference test tire in the agency's safety standards and regulations and to transition seamlessly to the new tire in the agency's compliance and consumer information test programs.

ASTM International has developed an updated specification for an SRTT designated F2493 (16-inch SRTT). The 16-inch SRTT is size P225/60R16. The 16-inch SRTT is considered to be more representative of current tires because of its larger size and new material and design features that lead to traction that is more typical of modern passenger car tires.[9] To the best of NHTSA's knowledge, the 16-inch SRTT is manufactured only by Michelin and sold under its Uniroyal brand.

To reference an SRTT that is more representative of tires on the road today, and in consideration of Michelin's decision to cease production of the 14-inch SRTT, NHTSA has determined that replacing the 14-inch SRTT in its regulations is warranted. The only suitable replacement for the 14-inch SRTT that has been suggested to NHTSA is the 16-inch SRTT. However, because the 16-inch SRTT is a larger size and uses more modern design and materials, it is likely that the 16-inch SRTT will not perform identically to the 14-inch SRTT. Therefore, NHTSA has been cooperating with Transport Canada, Natural Resources Canada, representatives of ASTM International committees F09 on tires and E17 on vehicle-pavement systems, the U.S. Tire Manufacturers Association (including Michelin, currently the sole manufacturer of SRTTs), and the Rubber Association of Canada to conduct testing to determine the consequences of replacing the 14-inch SRTT with the 16-inch SRTT. The results of the testing by these entities, in addition to NHTSA's own testing, have substantially contributed to this proposal to replace the 14-inch SRTT with the 16-inch SRTT.[10]

A. Proposed FMVSS Amendments

1. Surface Friction Measurement

As discussed above, other than for defining a ''snow tire,'' NHTSA uses the SRTT in the FMVSSs to define the surface coefficient of friction for the test surface for braking and electronic stability control (ESC) standards. The friction of the test surface is measured by the peak braking force prior to wheel lockup, which is referred to as a peak friction coefficient (PFC) or peak braking coefficient (PBC). For the purpose of this preamble, NHTSA uses the term peak friction coefficient or PFC, but the terms are used interchangeably in the FMVSS.

In the FMVSS, the peak friction coefficient of a surface is determined using the 1990 version of ASTM E1337 test method. The ASTM E1337 test method involves mounting the SRTT to a test trailer, bringing the trailer to a test speed of 40 mph (64 km/h), and applying the brake to produce the maximum braking force prior to wheel lockup.

When NHTSA was informed that production of the 14-inch SRTT was to be discontinued, NHTSA evaluated the 16-inch SRTT to determine whether it would be a suitable replacement. NHTSA carefully considered the effect of the 16-inch SRTT on the determination of PFC. NHTSA was concerned that the use of the 16-inch SRTT without further changes to the FMVSSs would increase the stringency of the braking and ESC FMVSSs. The reason for this was that the different materials used in the 16-inch SRTT and the increased size of the tire would result in the 16-inch SRTT having better traction performance than the 14-inch SRTT. If the 16-inch SRTT has improved traction performance relative to the 14-inch SRTT, then the same surface would have a higher PFC when tested with the 16-inch SRTT. Alternatively stated, obtaining an identical PFC value using the 16-inch SRTT would require a road surface with lower friction. Testing braking systems using stopping distance on road surfaces with lower friction would require improved braking performance to stop in the same distance, which is not an outcome intended by this rulemaking. Consequently, NHTSA sought a conversion factor to evaluate PFC of a test surface using the 16-inch SRTT without altering the severity of any braking or ESC FMVSSs.

[6] See 71 FR 877, 880 (Jan. 6, 2006).

[7] See 65 FR 33481 (May 24, 2000).

[8] See ''Discontinued Tire Will Lead to ASTM Standard Changes'' (July 30, 2015), *available at https://www.astm.org/cms/drupal-7.51/newsroom/discontinued-tire-will-lead-astm-standard-changes* (last accessed April 13, 2021).

[9] See ''New ASTM Specification Presents Requirements for Standard Reference Test Tire'' (April 1, 2007), *available at https://www.astm.org/cms/drupal-7.51/newsroom/new-astm-specification-presents-requirements-standard-reference-test-tire* (last accessed April 13, 2021).

[10] See Docket No. NHTSA–2020–0067.

Initial testing confirmed the assumption that using the 16-inch SRTT resulted in a test surface having a higher PFC than when evaluated using the 14-inch SRTT. Transportation Research Center, Inc. (TRC) conducted initial testing in support of the ASTM committee evaluating this issue (the E17.21 committee).[11] Testing was conducted on 15 different surfaces of varying friction. The evaluation of a dry test surface (*e.g.,* 0.9 PFC using the 14-inch SRTT) using the 16-inch SRTT resulted in a PFC over 15 percent higher than the PFC derived using the 14-inch SRTT. However, testing on a low friction surface (0.5 PFC using the 14-inch SRTT) showed that the PFC derived using the 16-inch SRTT and the 14-inch SRTT was similar.

Because the difference in performance between the 16-inch SRTT and the 14-inch SRTT was not consistent for all levels of surface friction, something more than a simple multiplier is necessary to correlate performance between the two tires. ASTM International has developed such a formula. That formula is included in the 2019 update to ASTM E1337, which NHTSA is proposing to incorporate by reference into the FMVSSs, in place of the 1990 version of E1337 currently referenced. NHTSA has used the formula in the 2019 version of E1337 to derive PFC value for all of the FMVSSs. Those values are listed in the table below.

Each value derived using the formula was rounded to the hundredths position, rounding up if necessary. This ensures that the updated FMVSS test surface PFC specification will be no more stringent as a result of this proposed amendment than it is now, consistent with NHTSA's intent in this rulemaking.

FMVSS section	PFC value using 14-inch SRTT	PFC value using 16-inch SRTT
FMVSS No. 105 S6.9.2(a) (high friction testing)	0.9	1.02
FMVSS No. 105 S6.9.2(b) (low friction testing)	0.5	0.55
FMVSS No. 121 S5.3.1.1, S5.7.1, S6.1.7 (high friction testing)[12]	0.9	1.02
FMVSS No. 121 S5.3.6.1, S6.1.7 (low friction testing)	0.5	0.55
FMVSS No. 122 S6.1.1.1 (high friction testing)	0.9	1.02
FMVSS No. 122 S6.1.1.2 (low friction testing)	≤0.45	≤0.50
FMVSS No. 122 S6.9.7.1	≥0.8	≥0.90
FMVSS No. 126 S6.2.2	0.9	1.02
FMVSS No. 135 S6.2.1, S7.4.3, S7.5.2, S7.6.2, S7.7.3, S7.8.2, S7.9.2, S7.10.3, S7.11.3	0.9	1.02
FMVSS No. 136	0.9	1.02
FMVSS No. 500[13]	0.9	1.02

NHTSA commissioned confirmatory testing using the 16-inch SRTT to verify that the PFC values discussed above are equivalent to the PFC values in the FMVSSs derived using the 14-inch SRTT. NHTSA has contracted with TRC to conduct this testing on five different test surfaces (wet ceramic, wet jennite, wet asphalt, dry asphalt, and dry broomed concrete). These test surfaces range from high to low PFC values. For each test surface, 10 of each of the 14-inch SRTT and the 16-inch SRTT were each tested 3 times with 10 stops per test, for a total of 300 tests for each size SRTT on each test surface. A final report summarizing the results has been placed in the docket identified at the beginning of this NPRM.

2. Snow Tire Definition

Presently, for a manufacturer to designate a tire as a ''snow tire,'' the tire must attain a traction index equal to or greater than 110 compared to the 14-inch SRTT when tested using the snow traction test in the 2000 version of ASTM F1805. The ASTM F09 committee on tires commissioned a study to determine the feasibility of replacing the 14-inch SRTT with the 16-inch SRTT in the determination of whether a tire meets the definition of ''snow tire.'' This study was funded by the United States Tire Manufacturers Association (USTMA).

The study consisted of testing of traction during the winter test seasons of 2016, 2017, and 2018 to develop a method to correlate results of tests conducted using the 16-inch SRTT with those conducted using the 14-inch SRTT. ASTM International has published a technical report documenting this work.[14] ASTM International determined that a correlation factor of 0.9876 was appropriate, meaning that a tire that attained a rating of 110 when tested using the 14-inch SRTT correlated to a rating of 111.4 or 111.5 when tested using the 16-inch SRTT, depending on the number of significant digits considered. Recent guidance issued by the USTMA, a trade association consisting of companies that manufacture tires in the United States, recommends a minimum traction index of 112 using the 16-inch SRTT.[15] Accordingly, NHTSA is proposing to amend the definition of ''snow tire'' in FMVSS No. 139 to specify that a snow tire is a tire that attains a traction index of 112 when tested using the updated F1895 test method using the 16-inch SRTT. This proposal is consistent with the guidance issued by USTMA, which NHTSA believes reflects a consensus within the tire industry on the appropriate traction index for use in determining what qualifies as a ''snow tire.'' NHTSA seeks comment on this proposal.

Furthermore, after reviewing this information from the USTMA, NHTSA determined that additional clarification was necessary to the definition of a ''snow tire'' in FMVSS No. 139. The latest (2020) version of ASTM F1805 defines the standard test procedure for measuring traction on ''snow'' and ''ice'' surfaces. However, there are multiple surface types in both the ''snow'' and ''ice'' categories. They include soft pack (new) snow, medium pack snow, medium hard pack snow, hard pack snow, ice—wet, and ice—dry.[16] The definition of ''snow tire'' in FMVSS No.

[11] See docket No. NHTSA–2020–0067.

[12] NHTSA is also proposing to revise Tables I, II, and IIA in FMVSS No. 121 to eliminate the redundant references to PFC values in those tables. In place of PFC values, NHTSA is proposing to include in Table I (Stopping Sequence) references to the sections in which the various procedures are set forth, which is a more helpful reference.

[13] Although FMVSS No. 500 specifies a PFC value for the test surface, the test surface is only used to verify the vehicle's maximum speed.

[14] *Available at https://www.astm.org/COMMIT/2019_04_10_E1136%20to%20F2493%20transition%20for%20ASTMF1805.pdf* (last accessed April 13, 2021).

[15] See *https://www.ustires.org/sites/default/files/USTMA_TISB_37_0.pdf* (last accessed April 13, 2021).

[16] The surface types are defined in the text of ASTM F1805.

139 does not specify the surface type specified within ASTM F1805 for testing.

NHTSA interprets that the ''medium pack snow'' condition was intended for use by manufacturers for marketing tires as ''snow tires.'' NHTSA seeks comment on whether this assumption is correct. It is the surface type specified for severe snow tires in UNECE Regulation No. 117 for determining when use of the Alpine or Three-Peak Mountain Snowflake marking that indicates that a tire meets the requirements for use in severe snow conditions. Based upon the research on the SRTT, the 2020 revision of ASTM F1805 contains a revised tractive coefficient range for ''medium pack snow'' using the 14-inch SRTT from 0.25–0.41 to 0.25–0.38 and adds a tractive coefficient range for ''medium pack snow'' using the 16-inch SRTT of 0.23–0.38.

Based on the research by ASTM International and USTMA's recent guidance, NHTSA is proposing to update the definition of a ''snow tire'': (1) To replace the reference to the 14-inch SRTT with the 16-inch SRTT and to change the minimum traction index in order to meet the definition of a ''snow tire'' from 110 to 112 using this tire; (2) to specify that this traction index is obtained when tested on the ''medium pack snow'' surface, and (3) to update the incorporation by reference of ASTM F1805 from the 2000 version to the 2020 version, which is the latest version. ASTM F1805–20 incorporates the research discussed above. NHTSA is not aware of other research on equivalent performance of the 14-inch SRTT and 16-inch SRTT on snow-covered surfaces other than the testing by ASTM International.

B. Proposed UTQGS Amendments

In anticipation of Michelin's decision to cease production of the 14-inch SRTT, NHTSA began including testing of the 16-inch SRTT as part of its BCWR determination. Since the second quarter of 2016, NHTSA has been duplicating BCWR testing using both the 14-inch SRTT and the 16-inch SRTT. NHTSA has shared some data from this testing with its testing partners (named at the end of Section I of this preamble) in order to develop options that could be implemented once production of the 14-inch SRTT has ended. Four options have been considered:

1. Use the research data to develop a correlation formula between the 14-inch SRTT and the 16-inch SRTT. While this would allow future testing and rating to be based on either SRTT, it was likely to be the most resource-intensive to develop and validate a formula.

2. Establish an effective date for the 16-inch SRTT and begin publishing the quarterly BCWR after that date using four quarters of data using that tire. After two quarters of testing it was apparent that this was likely to result in a shift in the BCWR. However, large shifts in BCWR have occurred in the past, such as when repaving was done on portions of the route.

3. Allow a transition period in which NHTSA would publish BCWR rates for both SRTTs, allowing manufacturers to choose when to shift within that period.

4. Establish an effective date to begin quarterly testing with the 16-inch SRTT, but continue to calculate the BCWR rate using the prior quarterly testing results used to calculate prior BCWR rates. The first quarter with official testing using the 16-inch SRTT CMT would result in a BCWR rate calculated from the average of those results and the results of the previous three quarters testing using the 14-inch SRTT CMT, the second quarter would average two quarters with the 16-inch SRTT CMT and 2 quarters with the 14-inch SRTT CMT, and so on.

In 2017, Michelin informed NHTSA that the test results from the first two quarters of testing were within the normal variability seen for BCWR.[17] Michelin believed that NHTSA could develop an entirely new formula for determining BCWR, but believed that such a formula may not be able to be developed prior to the end of production of 14-inch SRTT. Instead, Michelin recommended adding a new conversion factor to the existing formula derived from the ratio of the BCWR from the 14-inch SRTT CMT to the BCWR of the 16-inch SRTT CMT measured over a specific number of quarters of testing. Michelin recommended that this factor be based on at least six quarters of testing, which was all the testing that was available at the time of Michelin's recommendation.

NHTSA now has 14 consecutive quarters of testing data. Table 1 summarizes the quarterly BCWR values determined by NHTSA since the first quarter of 2017. As shown in Table 1, NHTSA has determined BCWR reference values for the 16-inch SRTT. Table 1 also shows BCWR rates for the 16-inch SRTT beginning in Q2 2017 after four quarters of BCWR values were obtained. Table 1 also shows a conversion factor based on the ratio of the BCWR using the 14-inch SRTT to the BCWR using the 16-inch SRTT measured over all available quarters of testing.

TABLE 1—QUARTERLY BCWR DATA SINCE APRIL 2016

	14-inch SRTT BCWR data	16-inch SRTT BCWR data	Quarterly published BCWR rate	Theoretical 16-inch SRTT BCWR rate	Derived conversion factor based on prior six quarters
January–March 2017	8.090	5.349	9.059	.....	.....
April–June 2017	7.556	5.952	8.573	.....	.....
July–September 2017	9.640	6.189	8.692	.....	.....
October–December 2017	8.932	6.578	8.555	6.017	.....
January–March 2018	7.481	5.731	8.402	6.113	.....
April–June 2018	8.253	6.074	8.577	6.143	1.392
July–September 2018	9.648	6.467	8.579	6.213	1.393
October–December 2018	8.867	6.602	8.562	6.219	1.403
January–March 2019	6.555	5.999	8.331	6.286	1.328
April–June 2019	8.242	5.506	8.328	6.144	1.348
July–September 2019	7.243	5.656	7.727	5.941	1.344
October–December 2019	7.237	6.206	7.319	5.842	1.312
January–March 2020	7.695	5.259	7.604	5.657	1.301
April–June 2020	6.719	5.616	7.224	5.684	1.276

[17] Michelin presentation; UTQG Wear Change from 14″ TO 16″ SRTT First Two Test Quarters. See docket No. NHTSA–2020–0067.

TABLE 1—QUARTERLY BCWR DATA SINCE APRIL 2016—Continued

	14-inch SRTT BCWR data	16-inch SRTT BCWR data	Quarterly published BCWR rate	Theoretical 16-inch SRTT BCWR rate	Derived conversion factor based on prior six quarters
July–September 2020	6.983	6.856	7.159	5.984	1.257
October–December 2020	8.122	6.886	7.380	6.154	1.206
January–March 2021	7.228	4.687	7.263	6.011	1.239

The conversion factor listed in the last column of Table 1 is determined by dividing the average of six quarters of BCWR testing with the 14-inch SRTT by the average of the same six quarters of BCWR with the 16-inch SRTT. The conversion factor is similar for all quarters currently available. NHTSA requests comments on how the new conversion factor should be selected from among the available quarters of data. For example, NHTSA could use the last six (or some other number) of quarters of data, or all data available to determine the conversion factor. NHTSA requests comments on which of these possible conversion factors NHTSA could use and why.

For this NPRM, NHTSA is basing the adjustment on the average of all 17 consecutive quarters of available data. The average BCWR wear rate using the 14-inch SRTT is 7.911. The average BCWR wear rate using the 16-inch SRTT is 5.942. Dividing 7.911 by 5.977 results in a conversion factor of 1.324. Based upon this new conversion factor, the new formula for the treadwear grade, assuming the decision was to use the most recent quarter's conversion factor, would be: [18]

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$$P = \frac{Projected\ mileage\ \times\ base\ course\ wear\ rate_{14}}{402}$$

$$P = \frac{Projected\ mileage\ \times\ base\ course\ wear\ rate_{16}}{402} \times \left(\frac{base\ course\ wear\ rate_{14}}{base\ course\ wear\ rate_{16}}\right)$$

$$\text{Conversion Factor} = \frac{base\ course\ wear\ rate_{14}}{base\ course\ wear\ rate_{16}} = 1.324$$

$$P = \frac{Projected\ mileage\ \times\ base\ course\ wear\ rate}{402} \times 1.324$$

$$P = \frac{Projected\ mileage\ \times\ base\ course\ wear\ rate}{304}$$

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NHTSA does not believe the calculation of projected mileage as used in this formula also requires adjustment, as the calculation takes into consideration the actual measurement of the CMT used during the test of the candidate tire being evaluated.

NHTSA is also proposing to modify language in the treadwear test procedure in § 575.104 to reference the total distance and schedule of events in terms of circuits completed rather than mileage. This proposed change is intended to allow testing to be more flexible in the vent of route changes or other unforeseen circumstances. With the added flexibility of these changes, NHTSA believes that it is preferable to use the actual mileage of the completed circuit in the calculation of the wear rate rather than the estimated 400 miles per circuit. NHTSA believes that this would ensure that the wear rate reflects the actual mileage covered if the completed 16 circuits is not exactly 6,400 miles. NHTSA seeks comment on these proposed changes and any potential effects they may have on the testing process or data integrity.

NHTSA also seeks comment on the specification in the note to § 575.104(e)(2)(ix)(C) that the CMT must

[18] The first equation definition P is set forth in 49 CFR 57.104(e)(2)(ix)(F).

be no more than one year old at the commencement of testing and that it must be used within two months after removal from storage. NHTSA lacks facilities to store tires in a climate-controlled environment at its testing facility in San Angelo, Texas. Therefore, because of the time limitations on the use of the CMT in the BCWR testing, NHTSA only purchases CMTs on a quarterly basis depending on funding availability and conducts BCWR testing as soon as feasible after receiving a shipment of CMTs. Lack of funding sometimes requires NHTSA to delay CMT purchases, and sometimes when NHTSA purchases CMTs, supplies may be limited, meaning that NHTSA is required to wait weeks or months before receiving CMTs for testing. To increase NHTSA's flexibility in purchasing and testing CMTs, NHTSA is considering lengthening the amount of time tires may be removed from storage to four months, so that NHTSA can purchase CMTs in advance and store them in its San Angelo facility. NHTSA also requests comment on whether the word ''storage'' is sufficiently well defined and, if not, how NHTSA could define ''storage'' more clearly to ensure tires are stored in such a way that would minimize testing variability without providing inflexible limitations on NHTSA's use of the SRTT. NHTSA requests comment on this proposed change.

C. Summary

Based on the foregoing, NHTSA has tentatively concluded that the best course of action in response to Michelin's determination to cease production of the 14-inch SRTT is to replace the 14-inch SRTT with the 16-inch SRTT for all uses in NHTSA's standards and regulations. Because the 16-inch SRTT is a different size and made of different materials, changes are necessary to the FMVSS and tire regulations to ensure that the use of the 16-inch SRTT to evaluate test surface friction does not alter the stringency of the standards or the treadwear ratings of tires in the UTQGS treadwear testing program. NHTSA tentatively believes that this proposal accomplishes those goals. NHTSA requests comment on that determination, the merits of these goals, and whether the proposed amendments would accomplish those goals. NHTSA also seeks comment on the use and storage requirements for the CMT tires used in the BCWR calculation.

III. Effective Date

For the changes to the UTQGS, NHTSA expects to make these changes effective at the next BCWR determination at least 30 days after the date of publication of a final rule. NHTSA does not believe any further lead time is necessary for the following reasons. First, because NHTSA is using a conversion factor to keep the rating scale used with the 14-inch SRTT and 16-inch SRTT identical, ratings of a particular line of tires should not be affected by this proposed rule. Second, tire lines rated prior to the effective date of the changes proposed in this rule would not be required to be rerated. Third, limited availability of the 14-inch SRTT could make it difficult for NHTSA to continue to obtain 14-inch SRTTs in its BCWR determinations. NHTSA is currently restricted by its regulations to using SRTTs that were manufactured within one year prior to the commencement of testing and two months after removal from storage in order to prevent variability in results due to tire aging. This provision prevents NHTSA from stockpiling 14-inch SRTTs.

For FMVSS changes, NHTSA is proposing a lead time of six months. This will give NHTSA's compliance test facilities sufficient time to obtain and validate test surfaces using the 16-inch SRTT. Although NHTSA has determined an equivalent level of surface friction when evaluating PBC with the 16-inch SRTT in place of the 14-inch SRTT, NHTSA anticipates requiring test facilities conducting NHTSA's compliance tests to revalidate test surfaces using the 16-inch SRTT, to ensure that testing is being done in accordance with the procedures in the FMVSS. A six-month lead time is consistent with the requirements of 49 U.S.C. 30111(d) that standards be effective between 180 days and 1 year after they are prescribed. However, potential unavailability of the 14-inch SRTT may constitute good cause for NHTSA to impose a shorter lead time in a final rule resulting from this proposal.

NHTSA does not believe that manufacturers require more than six months of lead time. Because NHTSA intends the proposed peak braking coefficient specifications in the FMVSS using the 16-inch SRTT to be an equivalent level of friction to existing peak braking coefficients using the 14-inch SRTT, NHTSA does not intend to affect the FMVSS compliance of any vehicle and does not believe this proposal would do so.

NHTSA requests comments on the proposed lead time for changes to the UTQGS and FMVSSs.

IV. Public Participation

How do I prepare and submit comments?

To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). NHTSA established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit your comments electronically to the docket following the steps outlined under **ADDRESSES**. You may also submit two copies of your comments, including the attachments, by mail to Docket Management at the beginning of this document, under **ADDRESSES**.

How can I be sure that my comments were received?

If you wish to be notified upon receipt of your mailed comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit the following to the NHTSA Office of Chief Counsel, 1200 New Jersey Avenue SE, Washington, DC 20590: (1) A complete copy of the submission; (2) a redacted copy of the submission with the confidential information removed; and (3) either a second complete copy or those portions of the submission containing the material for which confidential treatment is claimed and any additional information that you deem important to the Chief Counsel's consideration of your confidentiality claim. A request for confidential treatment that complies with 49 CFR part 512 must accompany the complete submission provided to the Chief Counsel. For further information, submitters who plan to request confidential treatment for any portion of their submissions are advised to review 49 CFR part 512, particularly those sections relating to document submission requirements. Failure to adhere to the requirements of part 512 may result in the release of confidential information to the public docket. In addition, you should submit two copies from which you have deleted the

claimed confidential business information, to Docket Management at the address given at the beginning of this document under **ADDRESSES**. To facilitate social distancing during COVID–19, NHTSA is temporarily accepting confidential business information electronically. Please see *https://www.nhtsa.gov/coronavirus/submission-confidential-business-information* for details.

Will the agency consider late comments?

NHTSA will consider all comments received before the close of business on the comment closing date indicated at the beginning of this document under **DATES**. In accordance with DOT policies, to the extent possible, NHTSA will also consider comments received after the specified comment closing date. If NHTSA receives a comment too late to consider in developing the proposed rule, NHTSA will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received on the internet. To read the comments on the internet, go to *http://www.regulations.gov* and follow the on-line instructions provided.

You may download the comments. The comments are imaged documents, in either TIFF or PDF format. Please note that even after the comment closing date, NHTSA will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, NHTSA recommends that you periodically search the Docket for new material.

You may also see the comments at the address and times given near the beginning of this document under **ADDRESSES**.

V. Regulatory Analyses

A. Executive Order 12866, Executive Order 13563, and DOT Rulemaking Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563, and the Department of Transportation's administrative rulemaking procedures. This rulemaking is not considered significant and was not reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.''

This proposal updates the standard reference test tire used as a baseline tire for consumer information testing, in the determination of what is a snow tire, and to evaluate testing surface friction for evaluating braking and electronic stability control performance. This proposal will not have a direct effect on safety because the changes proposed in this rule are designed to maintain the present level of stringency of NHTSA's braking and electronic stability control FMVSSs. However, if the 14-inch SRTT is discontinued without a replacement, NHTSA would be unable to verify test surface friction coefficient prior to compliance testing for braking and electronic stability control system FMVSSs. Thus, this rulemaking indirectly affects safety by ensuring that NHTSA would be able to perform compliance tests of those FMVSSs. Also, if this proposal were not adopted, it is expected that the 14-inch SRTT would soon no longer be available for purchase, rendering it impossible for NHTSA to continue maintaining the BCWR for treadwear testing. This unavailability of an SRTT would lead to tire manufacturers being unable to rate their tires for treadwear under the UTQGS and mold those ratings onto the side of the tire as required by 49 CFR part 575.

This proposed rule is expected to result in additional costs to NHTSA because the 16-inch SRTT has a retail price that is $35 per tire more than the 14-inch SRTT ($335 vs. $300).[19] NHTSA purchases 64 SRTTs for its own use annually in determining BCWR. Therefore, based on the cost difference of $35 per tire, NHTSA expects that, if adopted, this proposal would result in $2,240 additional annual costs to the government. However, NHTSA has been using the 14-inch SRTT and 16-inch SRTT side-by-side since 2016 for its quarterly BCWR determination in anticipation of this rulemaking and NHTSA plans to continue to do so until this proposal is finalized. After this proposal is finalized, NHTSA does not expect to continue purchasing 14-inch SRTTs. Therefore, when compared to years since 2016, NHTSA would likely purchase fewer SRTTs in subsequent years after this proposal is finalized.

As to potential costs to the public, based upon information provided to NHTSA by Michelin from 2017 and 2018, annual U.S. sales of 14-inch SRTTs is fewer than 2,000 units. Assuming that U.S. sales of 16-inch SRTTs is comparable to sales of 14-inch SRTTs, the annual cost of this proposal would be less than $70,000. However, NHTSA does not know how many sales are a consequence of the SRTT being used as part of NHTSA's compliance test procedures, versus those sold for other purposes (*e.g.,* SRTTs sold to assess the performance of tires to some other country's regulations or to voluntary industry standards). Any SRTT sales that are not related to compliance with NHTSA's regulations would not be affected by this proposal and the existence of such sales would mean this rule would be less costly than the maximum estimate of $70,000 per year. Moreover, NHTSA does not have any direct knowledge of whether regulated entities have been conducting side-by-side testing using both the 14-inch SRTT and 16-inch SRTTs like NHTSA has and whether side-by-side testing has artificially increased sales in 2017 and 2018.

NHTSA requests comments on the benefits and costs of this NPRM.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), 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 effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this proposal under the Regulatory Flexibility Act. I certify that this proposal will not have a significant economic impact on a substantial number of small entities. This proposal would directly impact the government, as it affects only the test procedures NHTSA uses in its FMVSSs and regulations that reference tire performance. It affects manufacturers of tires and of motor vehicles only to the

[19] Data on the price of the SRTT was obtained from instructions on how to purchase SRTTs from Michelin. See *https://www.astm.org/COMMIT/2011%2011%2008%20E1136%20F2493%20SRTT%20Purchase%20Procedure.pdf.* (last accessed April 13, 2021).

extent those manufacturers choose to test their products in the manner NHTSA would test them. They are not required to use the test procedures NHTSA uses.

Although we believe some entities producing tires or vehicles that would be tested by NHTSA using procedures that use the 16-inch SRTT are considered small businesses, we do not believe this proposal will have a significant economic impact on those manufacturers. First, the small manufacturers are not required to use the SRTT in certifying their products. Second, for manufacturers choosing to use the 16-inch SRTT to test their products, this proposal would result in a cost increase of only $35 per tire to entities currently purchasing the 14-inch SRTT to assess their products. We do not believe this cost increase is significant. Finally, for the changes to the UTQGS, because NHTSA is using a conversion factor to keep the rating scale used with the 14-inch SRTT and 16-inch SRTT identical, ratings of a particular line of tires should not be affected by this proposed rule. For FMVSS changes, NHTSA has determined an equivalent level of surface friction when evaluating PBC with the 16-inch SRTT in place of the 14-inch SRTT, so the change to the standard reference test tire should not change the performance of current tires or vehicles.

C. Executive Order 13132 (Federalism)

NHTSA has examined this proposal pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rulemaking would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The proposal would not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

NHTSA rules can preempt in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law addressing the same aspect of performance.

The express preemption provision described above is subject to a savings clause under which ''[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.'' 49 U.S.C. 30103(e). Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of such State common law tort causes of action by virtue of NHTSA's rules, even if not expressly preempted. This second way that NHTSA rules can preempt is dependent upon there being an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer, notwithstanding the manufacturer's compliance with the NHTSA standard. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will generally not be preempted. However, if and when such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. See *Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000).

Pursuant to Executive Orders 13132 and 12988, NHTSA has considered whether this proposed rule could or should preempt State common law causes of action. The agency's ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation.

To this end, the agency has examined the nature (*e.g.,* the language and structure of the regulatory text) and objectives of this proposed rule and finds that this proposal would affect only minimum safety standards (and only insofar as how NHTSA would conduct compliance testing under those standards). As such, NHTSA does not intend that this proposed rule preempt State tort law that would effectively impose a higher standard on motor vehicle manufacturers than that established by the affected FMVSSs. Establishment of a higher standard by means of State tort law would not conflict with the minimum standards affected by this proposal. Without any conflict, there could not be any implied preemption of a State common law tort cause of action. Aspects of this proposed rule would amend 49 CFR part 575, which is not a safety standard but an information program to assist consumers in making informed decisions when purchasing tires. The 14-inch SRTT is used as part of the determination of a tire's treadwear rating. This proposed change would not impose any requirements on anyone.

D. Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729; Feb. 7, 1996), requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) specifies whether administrative proceedings are to be required before parties file suit in court; (6) adequately defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this order, NHTSA notes as follows. The issue of preemption is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

E. Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19855, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental, health, or safety risk that the agency has reason to believe may have a disproportionate effect on children. If the regulatory action meets

both criteria, the agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

This proposal is not economically significant under E.O. 12866. Further, it is part of a rulemaking that is not expected to have a disproportionate health or safety impact on children. Consequently, no further analysis is required under Executive Order 13045.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid Office of Management and Budget (OMB) control number. There is not any information collection requirement associated with this proposal.

G. Incorporation by Reference

Under regulations issued by the Office of the Federal Register (1 CFR 51.5(a)), an agency, as part of a proposed rule that includes material incorporated by reference, must summarize material that is proposed to be incorporated by reference and must discuss the ways the material proposed to be incorporated by reference is reasonably available to interested parties or how the agency worked to make materials available to interested parties.

This proposed rule would incorporate by reference ASTM F2493, ''Standard Specification for P225/60R16 97S Radial Standard Reference Test Tire,'' to replace the existing incorporation by reference of ASTM E1136, which is a 14-inch standard reference test tire. As discussed earlier in this document, the ASTM F2493 is a standard reference test tire that is not used for general use, but, as its name suggests, is used for testing. The ASTM F2493 standard reference test tire is primarily used for evaluating surface friction (traction). The standard reference test tire specifications include, among other things, size, design, construction, and materials requirements.

This proposed rule would also update an existing incorporation by reference of ASTM E1337, ''Standard Test Method for Determining Longitudinal Peak Braking Coefficient (PBC) of Paved Surfaces Using Standard Reference Test Tire.'' ASTM E1337 is a standard test method for evaluating peak braking coefficient of a test surface using a standard reference test tire using a trailer towed by a vehicle. NHTSA uses this method to evaluate test surfaces for conducting compliance test procedures for its braking and electronic stability control standards. The 2019 version of ASTM E1337 specifies that the test may be conducted using the 16-inch SRTT and includes correlation data for converting testing using the 14-inch SRTT to the 16-inch SRTT and vice versa.

Finally, this proposed rule would update an existing incorporation by reference of ASTM F1805, ''Standard Test Method for Single Wheel Driving Traction in a Straight Line on Snow- and Ice-Covered Surfaces.'' ASTM F1805 is a test method for measuring the traction of tires on snow- or ice-covered surfaces using an instrumented four-wheel drive vehicle with a single test wheel capable of measure tire performance. NHTSA uses ASTM F1805 as part of its criteria for determining whether a tire may be considered a ''snow tire'' under its light vehicle tire standards. The 2020 version of F1805 specifies that the test may be conducted using the 16-inch SRTT and includes correlation data for converting testing using the 14-inch SRTT to the 16-inch SRTT and vice versa.

The ASTM standards proposed for incorporation by reference in this NPRM are available for review at NHTSA's headquarters in Washington, DC, and for purchase from ASTM International. The ASTM standards that are currently incorporated by reference (and which would be replaced under this proposal) are available for review at NHTSA or at ASTM International's online reading room.[20] If this proposal is adopted as a final rule, NHTSA anticipates that ASTM International would update its reading room to include these standards.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.,* the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as ''performance-based or design-specific technical specification and related management systems practices.'' They pertain to ''products and processes, such as size, strength, or technical performance of a product, process or material.''

Examples of organizations generally regarded as voluntary consensus standards bodies include ASTM International, the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

As discussed above, both standard reference test tires are based on specifications published by ASTM International. Thus, this rulemaking accords with the requirements of the NTTAA.

I. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires the agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation of why that alternative was not adopted.

This proposal would not result in any expenditure by State, local, or tribal governments or the private sector of more than $100 million, adjusted for inflation.

J. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

K. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number

[20] *https://www.astm.org/READINGLIBRARY/.*

(RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects

49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

49 CFR Part 575

Consumer protection, Incorporation by reference, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR parts 571 and 575 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 of title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95.

■ 2. Amend § 571.5 by revising paragraphs (d)(33) through (35) to read as follows:

§ 571.5 Matter incorporated by reference.

* * * * *

(d) * * *

(33) ASTM E1337–19, ''Standard Test Method for Determining Longitudinal Peak Braking Coefficient (PBC) of Paved Surfaces Using Standard Reference Test Tire,'' approved December 1, 2019, into §§ 571.105; 571.121; 571.122; 571.126; 571.135; 571.136; 571.500.

(34) ASTM F1805–20, ''Standard Test Method for Single Wheel Driving Traction in a Straight Line on Snow- and Ice-Covered Surfaces,'' approved May 1, 2020, into § 571.139.

(35) ASTM F2493–19, ''Standard Specification for P225/60R16 97S Radial Standard Reference Test Tire,'' approved Oct. 1, 2019, into §§ 571.105; 571.121; 571.122; 571.126; 571.135; 571.136; 571.139; 571.500.

* * * * *

■ 3. Amend § 571.105 by removing paragraphs S6.9.2(a) and S6.9.2(b) and adding paragraph S6.9.2 to read as follows:

§ 571.105 Standard No. 105; Hydraulic and electric brake systems.

* * * * *

S6.9.2 (a) For vehicles with a GVWR greater than 10,000 pounds, road tests (excluding stability and control during braking tests) are conducted on a 12-foot-wide, level roadway, having a peak friction coefficient of 1.02 when measured using an ASTM F2493–19 (incorporated by reference, see § 571.5), standard reference test tire, in accordance with ASTM E1337–19 (incorporated by reference, see § 571.5), at a speed of 40 mph, without water delivery. Burnish stops are conducted on any surface. The parking brake test surface is clean, dry, smooth, Portland cement concrete.

(b) For vehicles with a GVWR greater than 10,000 pounds, stability and control during braking tests are conducted on a 500-foot-radius curved roadway with a wet level surface having a peak friction coefficient of 0.55 when measured on a straight or curved section of the curved roadway using an ASTM F2493–19 standard reference tire, in accordance with ASTM E1337–19 at a speed of 40 mph, with water delivery.

* * * * *

■ 4. Amend § 571.121 by revising paragraphs S5.3.1.1 introductory text, S5.3.6.1, S5.7.1, S6.1.7, Table I, Table II, and Table IIa to read as follows:

§ 571.121 Standard No. 121; Air brake systems.

* * * * *

S5.3.1.1 Stop the vehicle from 60 mph on a surface with a peak friction coefficient of 1.02 with the vehicle loaded as follows:

* * * * *

S5.3.6.1 Using a full-treadle brake application for the duration of the stop, stop the vehicle from 30 mph or 75 percent of the maximum drive-through speed, whichever is less, on a 500-foot radius curved roadway with a wet level surface having a peak friction coefficient of 0.55 when measured on a straight or curved section of the curved roadway using an ASTM F2493–19 (incorporated by reference, see § 571.5) standard reference tire, in accordance with ASTM E1337–19 (incorporated by reference, see § 571.5), at a speed of 40 mph, with water delivery.

* * * * *

S5.7.1 *Emergency brake system performance.* When stopped six times for each combination of weight and speed specified in S5.3.1.1, except for a loaded truck tractor with an unbraked control trailer, on a road surface having a PFC of 1.02, with a single failure in the service brake system of a part designed to contain compressed air or brake fluid (except failure of a common valve, manifold, brake fluid housing, or brake chamber housing), the vehicle shall stop at least once in not more than the distance specified in Column 5 of Table II, measured from the point at which movement of the service brake control begins, except that a truck-tractor tested at its unloaded vehicle weight plus up to 1,500 pounds shall stop at least once in not more than the distance specified in Column 6 of Table II. The stop shall be made without any part of the vehicle leaving the roadway, and with unlimited wheel lockup permitted at any speed.

* * * * *

S6.1.7 Unless otherwise specified, stopping tests are conducted on a 12-foot wide level, straight roadway having a peak friction coefficient of 1.02. For road tests in S5.3, the vehicle is aligned in the center of the roadway at the beginning of a stop. Peak friction coefficient is measured using an ASTM F2493–19 standard reference test tire (see ASTM F2493–19 (incorporated by reference, see § 571.5)) in accordance with ASTM E1337–19 (incorporated by reference, see § 571.5), at a speed of 40 mph, without water delivery for the surface with PFC of 1.02, and with water delivery for the surface with PFC of 0.55.

* * * * *

TABLE I—STOPPING SEQUENCE

	Truck tractors	Single unit trucks and buses
Burnish (S6.1.8)	1	1
Stability and Control at GVWR (S5.3.6)	2	N/A
Stability and Control at LLVW (S5.3.6)	3	5
Manual Adjustment of Brakes	4	N/A
60 mph Service Brake Stops at GVWR (S5.3.1)	5	2
60 mph Emergency Service Brake Stops at GVWR (S5.7.1)	N/A	3

TABLE I—STOPPING SEQUENCE—Continued

	Truck tractors	Single unit trucks and buses
Parking Brake Test at GVWR (S5.6)	6	4
Manual Adjustment of Brakes	7	6
60 mph Service Brake Stops at LLVW (S5.3.1)	8	7
60 mph Emergency Service Brake Stops at LLVW (S5.7.1)	9	8
Parking Brake Test at LLVW (S5.6)	10	9
Final Inspection	11	10

TABLE II—STOPPING DISTANCE IN FEET

Vehicle speed in miles per hour	Service brake						Emergency brake	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
30	70	78	65	78	84	61	170	186
35	96	106	89	106	114	84	225	250
40	125	138	114	138	149	108	288	325
45	158	175	144	175	189	136	358	409
50	195	216	176	216	233	166	435	504
55	236	261	212	261	281	199	520	608
60	280	310	250	310	335	235	613	720

Note:
(1) Loaded and Unloaded Buses.
(2) Loaded Single-Unit Trucks.
(3) Loaded Tractors with Two Axles; or with Three Axles and a GVWR of 70,000 lbs. or less; or with Four or More Axles and a GVWR of 85,000 lbs. or less. Tested with an Unbraked Control Trailer.
(4) Loaded Tractors with Three Axles and a GVWR greater than 70,000 lbs.; or with Four or More Axles and a GVWR greater than 85,000 lbs. Tested with an Unbraked Control Trailer.
(5) Unloaded Single-Unit Trucks.
(6) Unloaded Tractors (Bobtail).
(7) All Vehicles except Tractors, Loaded and Unloaded.
(8) Unloaded Tractors (Bobtail).

TABLE IIA—STOPPING DISTANCE IN FEET: OPTIONAL REQUIREMENTS FOR: (1) THREE-AXLE TRACTORS WITH A FRONT AXLE THAT HAS A GAWR OF 14,600 POUNDS OR LESS, AND WITH TWO REAR DRIVE AXLES THAT HAVE A COMBINED GAWR OF 45,000 POUNDS OR LESS, MANUFACTURED BEFORE AUGUST 1, 2011; AND (2) ALL OTHER TRACTORS MANUFACTURED BEFORE AUGUST 1, 2013

Vehicle speed in miles per hour	Service Brake				Emergency Brake	
	(1)	(2)	(3)	(4)	(5)	(6)
30	70	78	84	89	170	186
35	96	106	114	121	225	250
40	125	138	149	158	288	325
45	158	175	189	200	358	409
50	195	216	233	247	435	504
55	236	261	281	299	520	608
60	280	310	335	355	613	720

Note: (1) Loaded and unloaded buses; (2) Loaded single unit trucks; (3) Unloaded truck tractors and single unit trucks; (4) Loaded truck tractors tested with an unbraked control trailer; (5) All vehicles except truck tractors; (6) Unloaded truck tractors.

* * * * *

■ 5. Amend § 571.122 by revising paragraphs S6.1.1.1, S6.1.1.2, S6.1.1.3, and S6.9.7.1(a) to read as follows:

§ 571.122 Standard No. 122; Motorcycle brake systems.

* * * * *

S6.1.1.1 *High friction surface.* A high friction surface is used for all dynamic brake tests excluding the ABS tests where a low-friction surface is specified. The high-friction surface test area is a clean, dry and level surface, with a gradient of ≤1 percent. The high-friction surface has a peak braking coefficient (PBC) of 1.02.

S6.1.1.2 *Low-friction surface.* A low-friction surface is used for ABS tests where a low-friction surface is specified. The low-friction surface test area is a clean and level surface, which may be wet or dry, with a gradient of ≤1 percent. The low-friction surface has a PBC of ≤0.50.

S6.1.1.3 *Measurement of PBC.* The PBC is measured using the ASTM F2493–19 standard reference test tire, in accordance with ASTM E1337–19, at a speed of 64 km/h (both publications incorporated by reference; see § 571.5).

* * * * *

S6.9.7.1 * * *

(a) *Test surfaces.* A low friction surface immediately followed by a high friction surface with a PBC ≥0.90.

* * * * *

■ 6. Amend § 571.126 by revising paragraph S6.2.2 to read as follows:

§ 571.126 Standard No. 126; Electronic stability control systems for light vehicles.

* * * * *

S6.2.2 The road test surface must produce a peak friction coefficient (PFC) of 1.02 when measured using an ASTM F2493–19 (incorporated by reference, see § 571.5) standard reference test tire, in accordance with ASTM E1337–19 (incorporated by reference, see § 571.5) at a speed of 64.4 km/h (40 mph), without water delivery.

* * * * *

■ 7. Amend § 571.135 by revising paragraphs S6.2.1, S7.4.3(f), S7.5.2(f), S7.6.2(f), S7.7.3(f), S7.8.2(f), S7.9.2(f), S7.10.3(e), and S7.11.3(f) to read as follows:

§ 571.135 Standard No. 135; Light vehicle brake systems.

* * * * *

S6.2.1 Unless otherwise specified, the road test surface produces a peak friction coefficient (PFC) of 1.02 when measured using an ASTM F2493–19 (incorporated by reference, see § 571.5) standard reference test tire, in accordance with ASTM E1337–19 (incorporated by reference, see § 571.5), at a speed of 64.4 km/h (40 mph), without water delivery.

* * * * *

S7.4.3 * * *

(f) Test surface: PFC of at least 1.02.

* * * * *

S7.5.2 * * *

(f) Test surface: PFC of 1.02.

* * * * *

S7.6.2 * * *

(f) Test surface: PFC of 1.02.

* * * * *

S7.7.3 * * *

(f) Test surface: PFC of 1.02.

* * * * *

S7.8.2 * * *

(f) Test surface: PFC of 1.02.

* * * * *

S7.9.2 * * *

(f) Test surface: PFC of 1.02.

* * * * *

S7.10.3 * * *

(e) Test surface: PFC of 1.02.

* * * * *

S7.11.3 * * *

(f) Test surface: PFC of 1.02.

* * * * *

■ 8. Amend § 571.136 by revising paragraph S6.2.2 to read as follows:

§ 571.136 Standard No. 136; Electronic stability control systems for heavy vehicles.

* * * * *

S6.2.2 The road test surface produces a peak friction coefficient (PFC) of 1.02 when measured using an ASTM F2493–19 standard reference test tire, in accordance with ASTM E1337–19, at a speed of 64.4 km/h (40 mph), without water delivery (both documents incorporated by reference, see § 571.5).

* * * * *

■ 9. Amend § 571.139 by revising the definition of ''Snow tire'' in S3 to read as follows:

§ 571.139 Standard No. 139; New pneumatic radial tires for light vehicles.

* * * * *

S3 * * *

Snow tire means a tire that attains a traction index equal to or greater than 112, compared to the ASTM F2493–19 (incorporated by reference, see § 571.5) Standard Reference Test Tire when using the snow traction test on the medium pack snow surface as described in ASTM F1805–20 (incorporated by reference, see § 571.5), and that is marked with an Alpine Symbol specified in S5.5(i) on at least one sidewall.

* * * * *

■ 10. Amend § 571.500 by revising paragraph S6.2.1 to read as follows:

§ 571.500 Standard No. 500; Low-speed vehicles.

* * * * *

S6.2.1 *Pavement friction.* Unless otherwise specified, the road test surface produces a peak friction coefficient (PFC) of 1.02 when measured using a standard reference test tire that meets the specifications of ASTM F2493–19, in accordance with ASTM E1337–19, at a speed of 64.4 km/h (40.0 mph), without water delivery (both incorporated by reference; see § 571.5).

* * * * *

PART 575—CONSUMER INFORMATION

■ 11. The authority citation for part 575 of title 49 continues to read as follows:

Authority: 49 U.S.C. 32302, 32304A, 30111, 30115, 30117, 30123, 30166, 30181, 30182, 30183, and 32908, Pub. L. 104–414, 114 Stat. 1800, Pub. L. 109–59, 119 Stat. 1144, Pub. L. 110–140, 121 Stat. 1492, 15 U.S.C. 1232(g); delegation of authority at 49 CFR 1.95.

■ 12. Amend § 575.3 by revising paragraph (c) to read as follows:

§ 575.3 Matter incorporated by reference.

* * * * *

(c) *ASTM International (ASTM),* 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959, 610–832–9500, *https://www.astm.org/.*

(1) ASTM E 501–08 (''ASTM E 501''), ''Standard Specification for Standard Rib Tire for Pavement Skid-Resistance Tests'' (June 2008), IBR approved for §§ 575.104 and 575.106.

(2) ASTM F2493–19 (''ASTM F2493''), ''Standard Specification for P225/60R16 97S Radial Standard Reference Test Tire,'' (approved Oct. 1, 2019), IBR approved for § 575.104.

* * * * *

■ 13. Amend § 575.104 by revising paragraphs (e)(2)(viii) introductory text, (e)(2)(viii)(A) through (E), and (e)(2)(ix)(A)(*2*), the note to paragraph (e)(2)(ix)(C), and paragraph (e)(2)(ix)(F) to read as follows:

§ 575.104 Uniform tire quality grading standards.

* * * * *

(e) * * *

(2) * * *

(viii) Drive the convoy on the test roadway for 16 circuits (approximately 6,400 miles).

(A) After every circuit (approximately 400 miles), rotate each vehicle's tires by moving each front tire to the same side of the rear axle and each rear tire to the opposite side of the front axle. Visually inspect each tire for treadwear anomalies.

(B) After every second circuit (approximately 800 miles), rotate the vehicles in the convoy by moving the last vehicle to the lead position. Do not rotate driver positions within the convoy. In four-car convoys, vehicle one shall become vehicle two, vehicle two shall become vehicle three, vehicle three shall become vehicle four, and vehicle four shall become vehicle one.

(C) After every second circuit (approximately 800 miles), if necessary, adjust wheel alignment to the midpoint of the vehicle manufacturer's specification, unless adjustment to the midpoint is not recommended by the manufacturer; in that case, adjust the alignment to the manufacturer's recommended setting. In all cases, the setting is within the tolerance specified by the manufacturer of the alignment machine.

(D) After every second circuit (approximately 800 miles), if determining the projected mileage by the 9-point method set forth in paragraph (e)(2)(ix)(A)(*1*) of this section, measure the average tread depth of each tire following the procedure set forth in paragraph (e)(2)(vi) of this section.

(E) After every fourth circuit (approximately 1,600 miles), move the complete set of four tires to the following vehicle. Move the tires on the last vehicle to the lead vehicle. In moving the tires, rotate them as set forth in paragraph (e)(2)(viii)(A) of this section.

* * * * *

(ix) * * *

(A) * * *

(*2*) *Two-point arithmetical method.* (*i*) For each course monitoring and

candidate tire in the convoy, using the average tread depth measurements obtained in accordance with paragraphs (e)(2)(vi) and (e)(2)(viii)(F) of this section and the corresponding mileages as data points, determine the slope (m) of the tire's wear in mils of tread depth per 1,000 miles by the following formula:

$$m = 1000\,\frac{(Y1 - Yo)}{(X1 - Xo)}$$

Where:

Yo = average tread depth after break-in, mils.

Y1 = average tread depth after 16 circuits (approximately 6,400 miles), mils.

Xo = 0 miles (after break-in).

X1 = Total mileage of travel after 16 circuits (approximately 6,400 miles).

(ii) This slope (m) will be negative in value. The tire's wear rate is defined as the slope (m) expressed in mils per 1,000 miles.

* * * * *

(C) * * *

Note to paragraph (e)(2)(ix)(C): The base wear rate for the course monitoring tires (CMTs) will be obtained by the Government by running the tire specified in ASTM F2493 (incorporated by reference, see § 575.3) course monitoring tires for 16 circuits over the San Angelo, Texas, UTQGS test route 4 times per year, then using the average wear rate from the last 4 quarterly CMT tests for the base course wear rate calculation. Each new base course wear rate will be published in Docket No. NHTSA–2001–9395. The course monitoring tires used in a test convoy must be no more than one-year-old at the commencement of the test and must be used within four months after removal from storage.

* * * * *

(F) Compute the grade (P) of the of the NHTSA nominal treadwear value for each candidate tire by using the following formula:

$$P = \frac{Projected\ mileage\ \times\ base\ course\ wear\ rate_n}{304}$$

Where base course wear rate$_n$ = new base course wear rate, *i.e.,* average treadwear of the last 4 quarterly course monitoring tire tests conducted by NHTSA.

Round off the percentage to the nearest lower 20-point increment.

* * * * *

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.8.

Steven S. Cliff,

Acting Administrator.

[FR Doc. 2021–15361 Filed 8–4–21; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 86, No. 148
Thursday, August 5, 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

USAID Information Collection on COVID–19 Global Response and Recovery Implementation Plan

AGENCY: United States Agency for International Development (USAID), COVID–19 Task Force.

ACTION: Notice of emergency OMB approval.

SUMMARY: In accordance with the emergency review procedures of the Paperwork Reduction Act of 1995 (PRA), the United States Agency for International Development (USAID), is announcing that on July 26, 2021, the Office of Management and Budget (OMB) granted emergency approval of a new information collection to inform technical approaches to implementing USAID's COVID–19 Implementation Plan. This emergency approval is valid until January, 2022.

DATES: USAID plans initially to seek information between August 1 and August 13, 2021.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Lisa Schechtman, *lschechtman@usaid.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 5 CFR 1320.13, the Agency submitted a request for emergency approval of a new information collection on July 23, 2021, which was approved by OMB on July 26, 2021. The collection will request input from select experts on implementation of the five objectives of the U.S. Global COVID–19 Response and Recovery Framework, and USAID's lines of efforts to help accomplish these objectives. Information will be requested of non-governmental organizations and private sector entities through focus-group discussions.

Description of Proposed Use of Information

The information will be collected via small focus groups, and will be used by the USAID COVID–19 Task Force and technical bureaus to improve the technical assistance, global leadership, and guidance USAID provides to implementing partners, the InterAgency, and Missions globally. This will enable more focused, efficient, and effective coordination and implementation of the USAID COVID–19 Implementation Plan. Examples of use of similar information from past similar information collections undertaken by USAID include guidance documents on technical issues, alignment with national plans and strategies, or incorporation of key issues in Country Development Cooperation Strategies. Some materials produced utilizing information collected through this request may be made available to the public.

Time Burden

OMB's approval enables USAID to engage a total of 250 individual respondents. Each respondent will be requested to provide one hour of time. As such, the total estimated time burden of this proposed information collection request is 250 hours.

Ashley Boccuzzi,

Coordination Advisor, USAID COVID–19 Task Force.

[FR Doc. 2021–16646 Filed 8–4–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice for Comment on Two Strategic Plans for the Subcommittee on Aquaculture Science Planning and Regulatory Efficiency Task Forces and on Updating the National Aquaculture Development Plan

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: The Subcommittee on Aquaculture (SCA) is a statutory subcommittee that operates under the Committee on Environment of the National Science and Technology Council (NSTC) under the Office of Science and Technology Policy in the Executive Office of the President [National Aquaculture Act of 1980 (Pub. L. 96–362. 94 Stat. 1198, 16 U.S.C. 2801, *et seq.*) and the National Aquaculture Improvement Act of 1985 (Pub. L. 99–198, 99 Stat. 1641)]. In October 2018, the SCA established a Science Planning Task Force charged with documenting Federal science and technology opportunities and priorities for aquaculture by revising and updating the National Strategic Plan for Federal Aquaculture Research (2014–2019). Similarly, in February 2019, the SCA established a Regulatory Efficiency Task Force charged with developing a new plan for interagency science and technology coordination to improve regulatory efficiency, research and technology development, and economic growth. The Task Forces are seeking public comment on Science and Regulatory Efficiency strategic plans to determine if their respective topics are adequately covered. In addition, in May of 2020, the SCA established an Economic Development Task Force charged with developing a strategic plan for economic development through aquaculture. Separately from SCA, the National Aquaculture Act of 1980 requires select federal agencies to develop a National Aquaculture Development Plan (NADP). Last completed in 1983, the NADP describes aquaculture associated technologies, problems, and opportunities in the United States and its territories. It recommends actions to solve problems and analyzes the social, environmental, and economic impacts of growth in aquaculture. The SCA plans to update the NADP using the Science and Regulatory Efficiency plans described here, with the addition of the Economic Development plan currently in process.

DATES: Comments must be received by September 10th, 2021 to be assured of consideration.

ADDRESSES: Address all comments concerning the *Science Plan* to Task Force Chair Dr. Caird Rexroad, National Program Leader for Aquaculture, Agricultural Research Service, Office of National Programs, 5601 Sunnyside Avenue, Room 4–2106, Beltsville, Maryland 20705. Submit electronic comments to *AquaSciencePlan@usda.gov.* Address all comments concerning the *Regulatory Efficiency*

Plan and the National Aquaculture Development Plan to Task Force Chair Kristine Cherry, Chief, Regulatory and Policy Branch at NOAA Fisheries Office of Aquaculture, NOAA National Marine Fisheries Service, 1315 East-West Highway, Room 14461, Silver Spring, MD 20910–3282. Submit electronic comments to *Aqua.RegPlan@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: National Program Leader, Agricultural Research Service, U.S. Department of Agriculture, Dr. Caird Rexroad, Voice: (304) 620–5234, Fax: 301–504–4873, Email: *Caird.RexroadIII@usda.gov.*

SUPPLEMENTARY INFORMATION:

Type of Request: Seeking comments on the *National Strategic Plan for Aquaculture Research (2021–2025)* and the *Strategic Plan to Improve Aquaculture Regulatory Efficiency* to determine if national aquaculture science and technology priorities and opportunities to improve regulatory efficiencies are adequately represented.

Abstract: The Subcommittee on Aquaculture (SCA) is a statutory subcommittee that operates under the Committee on Environment of the National Science and Technology Council (NSTC) under the Office of Science and Technology Policy in the Executive Office of the President [National Aquaculture Act of 1980 (Pub. L. 96–362. 94 Stat. 1198, 16 U.S.C. 2801, *et seq.*) and the National Aquaculture Improvement Act of 1985 (Pub. L. 99–198, 99 Stat. 1641)]. In October 2018, the SCA established a Science Planning Task Force charged with documenting Federal science and technology opportunities and priorities for aquaculture by revising and updating the *National Strategic Plan for Federal Aquaculture Research (2014–2019).* This Task Force included federal employees from the Department of Agriculture, Department of Commerce, Agency for International Development, Department of Health and Human Services, Department of the Interior, Department of Energy, the Environmental Protection Agency, and the National Science Foundation. The Plan was drafted with the following goals:

Goal 1. Develop Economic Growth through Aquaculture;

Goal 2. Improve Aquaculture Production Technologies and Inform Decision Making; and

Goal 3. Uphold Animal Well-Being, Product Safety and Nutritional Value.

The National Strategic Plan for Federal Aquaculture Research (2014–2019) was developed to serve as a roadmap for implementing targeted strategic goals to advance domestic aquaculture by describing ways that government can help advance and expand domestic interests in aquaculture, and therefore, providing greater economic and recreational opportunities in the United States. The plan identified Federal resources in research and extension, the need for the best research to inform public policy and regulatory decisions, and the need for improved public understanding of aquaculture, its diversity, and potential benefits and risks. The 2021 update of this document retains these objectives and will serve to communicate federal aquaculture science priorities to the public.

The Science Planning Task Force updated the 2014–2019 Plan and is seeking public comment to determine if Federal aquaculture research opportunities and priorities are adequately reflected in the Plan. The Plan in its entirety is available at: *https://www.ars.usda.gov/SCA/taskforce.html.*

Similarly, in February 2019, the SCA established a Regulatory Efficiency Task Force charged with developing a new plan for interagency science and technology coordination to improve regulatory efficiency, research and technology development, and economic growth. This Task Force included federal employees from the Department of Agriculture, Department of Commerce, Department of Health and Human Services, Department of the Interior, Department of Energy, the Environmental Protection Agency, and the Army Corps of Engineers. The *Strategic Plan to Enhance Regulatory Efficiency in Aquaculture* was drafted with the following goals:

Goal 1. Improve Efficiencies in Aquaculture Permitting and Authorization Programs;

Goal 2. Implement a National Approach to Aquatic Animal Health Management of Aquaculture; and

Goal 3. Refine and Disseminate Tools for Aquaculture Regulatory Management.

The Regulatory Efficiency Task Force developed these new plans and is seeking public comment to determine if opportunities to improve Federal regulatory efficiencies are adequately reflected in the Plan. The Plan in its entirety is available at: *https://www.ars.usda.gov/SCA/taskforce.html.*

The NAA of 1980 requires, in revising the Plan, that the Secretary of Agriculture consult with the Secretary of Commerce and the Secretary of the Interior, other appropriate Federal officers, States, regional fishery management councils established under [the Magnuson-Stevens Act], and representatives of the aquaculture industry. In addition, the Act requires the Secretary of Agriculture to give interested persons and organizations an opportunity to comment during the development of the Plan. The NADP is required to include all the elements listed in National Aquaculture Act of 1980; and additionally, identify legal/regulatory constraints and solutions, specifically use rights. The main elements of the NADP are described in § 2303(b)(1) through (6) of the National Aquaculture Act of 1980.

The SCA believes that much of the required content of the NADP was developed either within the former JSA, the current SCA, or individually by agencies throughout the 37 years the plan has been in effect. As described in this notice, significant efforts are underway to develop strategic plans on science and regulatory efficiency. Additional work is being done by the SCA to develop similar analyses for economic development through aquaculture. The SCA concluded that the effort to begin updating the NADP should only begin once the SCA has concluded their work on public engagement and publishing of the strategic plans. It is expected that these plans will include updates of a significant number of the elements in the NADP.

All comments received will become a matter of public record.

Simon Y. Liu,

Acting Administrator, ARS.

[FR Doc. 2021–16711 Filed 8–4–21; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 2, 2021.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are required regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to

respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by September 7, 2021 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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

Farm Service Agency

Title: Coronavirus Food Assistance Program 2 (CFAP2).

OMB Control Number: 0560–0297.

Summary of Collection: This information collection request is required to support the Coronavirus Food Assistance Program 2 (CFAP 2) information collection activities to provide payments to eligible producers who, with respect to their agricultural commodities, have been impacted by the effects of the COVID–19 pandemic. The information collection is necessary to evaluate the application and other required paperwork for determining the producer's eligibility and assist in the producer's payment calculations. Producers must submit a completed CFAP 2 application and additional documentation for eligibility, such as certifications of compliance with adjusted gross income provisions and conservation compliance activities; those additional documents and forms must be submitted no later than 60 days from the date a producer signs the application. Contract producers are now eligible to receive direct payments that is currently included in the request.

Need and Use of the Information: In order to determine whether a producer is eligible for CFAP and to calculate a payment, a producer is required to submit AD–3117, CFAP application; AD–3117A-Continuation Form for CFAP-Milk Production Modification; AD–3117B- Continuation Sheet for Coronavirus Food Assistance Program 2 (CFAP 2) Application for Contract Producers, CCC–902, Farm Operating Plan for Payment Eligibility, Parts A & B; CCC–901, Member Information for Legal Entities, if applicable; CCC–941, Average Adjusted Gross Income (AGI) Certification and Consent to Disclosure of Tax Information; and CCC–942, Certification of Income from Farming, Ranching, and Forestry Operations, Optional, and AD–1026- Highly Erodible Land Conservation (HELC) and Wetland Conservation Certification.

The information submitted by respondents will be used by FSA and AMS to determine eligibility and distribute payments to eligible producers under CFAP. Failure to solicit applications will result in failure to provide payments to eligible producers.

Description of Respondents: Farmers and Producers.

Number of Respondents: 1,248,901.

Frequency of Responses: Reporting; Other (one-time).

Total Burden Hours: 926,051.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2021–16733 Filed 8–4–21; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Alaska Region Supplement to Forest Service Manual 2720: Special Uses; Outfitting and Guiding Permit for Strictly Point-To-Point Commercial Transportation To, From, and Within the Mendenhall Glacier Visitor Center Subunit of the Mendenhall Glacier Recreation Area

AGENCY: Forest Service, USDA.

ACTION: Extension of comment period.

SUMMARY: The United States Department of Agriculture (USDA) Forest Service is seeking public comment on a proposed revision to a directive supplement that would require an outfitting and guiding permit for strictly point-to-point commercial transportation to, from, and within the Mendenhall Glacier Visitor Center subunit of the Mendenhall Glacier Recreation Area (Visitor Center subunit) in the Alaska Region of the Forest Service (Alaska Region). Comment is also requested on the revision to the Forest Service's approved information collection for outfitting and guiding permits.

DATES: The comment period for the proposed rule published June 24, 2021, at 86 FR 33211, is extended. Comments should be received on or before August 27, 2021.

ADDRESSES: The proposed revision to the directive supplement is available at, and comments may be submitted electronically to, *https://cara.ecosystem-management.org/Public/CommentInput?project=ORMS-2314.* Written comments may be mailed to Jennifer Berger, Alaska Region Public Services Program Leader (RLM), P.O. Box 21628, Room 535b, Juneau, AK 99802–1628. All timely comments, including names and addresses, will be placed in the record and will be available for public inspection and copying. The public may inspect comments received at *https://cara.ecosystem-management.org/Public/ReadingRoom?project=ORMS-2314.*

FOR FURTHER INFORMATION CONTACT: Jennifer Berger, Alaska Region Public Services Program Leader, at 907–586–8843 or *jennifer.berger@usda.gov.* Individuals using telecommunication devices for the hearing-impaired may call the Federal Information Relay Service at 800–877–8339 between 8 a.m. and 8 p.m. Eastern Daylight Time, Monday through Friday.

Dated: August 2, 2021.

Tina Johna Terrell,

Associate Deputy Chief, National Forest System.

[FR Doc. 2021–16710 Filed 8–4–21; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the North Dakota Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the North Dakota Advisory Committee to the Commission will convene by conference call on Thursday, August 12, 2021, at 1:00 p.m. (CT). The purpose is to discuss the release of the fair housing report.

DATES: Thursday, August 12, 2021, at 1:00 p.m. (CT).

PUBLIC WEBEX CONFERENCE REGISTRATION LINK (video and audio): *https://bit.ly/3i4EQ2W;* password (if necessary): USCCR–ND.

TO JOIN BY PHONE ONLY: Dial 1–800–360–9505; Access code: 199 987 9280#.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor at *ero@usccr.gov* or by phone at 202–921–2212.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the WebEx 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 the call-in number found through registering at the web link provided above for the meeting.

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 respective meeting. Written comments may be emailed to Barbara Delaviez at *ero@usccr.gov.* All written comments received will be available to the public.

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 the *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

Thursday, August 12, 2021; 1:00 p.m. (CT)

1. Roll call
2. Discuss the Release of the Fair Housing Report
3. Next Steps
4. Public Comment
5. Other Business
6. Adjourn

Dated: August 2, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–16729 Filed 8–4–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–898]

Large Diameter Welded Pipe From the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of large diameter welded pipe (welded pipe) from the Republic of Korea (Korea). The period of review (POR) is June 29, 2018, through December 31, 2019.

DATES: Applicable August 5, 2021.

FOR FURTHER INFORMATION CONTACT: George Ayache or Joseph Dowling, 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) 482–2623 and (202) 482–1646, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 10, 2020, Commerce published a notice of initiation of an administrative review of the countervailing duty (CVD) order on welded pipe from Korea.[1] On July 21, 2020, Commerce tolled all deadlines in administrative reviews by 60 days.[2] On March 9, 2021, Commerce extended the deadline for the preliminary results of this review to no later than July 30, 2021.[3]

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[4] A list of topics discussed in the Preliminary Decision Memorandum is included at the appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.*

Scope of the Order

The merchandise covered by the order is welded pipe. For a complete description of the scope of the order, *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(l)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[5] For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Companies Not Selected for Individual Review

The statute and Commerce's regulations do not directly address the CVD rates to be applied to companies not selected for individual examination where Commerce limited its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, Commerce normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation. Section 777A(e)(2) of the Act provides that ''the individual countervailable subsidy rates determined under subparagraph (A) shall be used to determine the all-others rate under section 705(c)(5) {of the Act}.'' Section 705(c)(5)(A) of the Act states that for companies not investigated, in general, we will determine an all-others rate by weight-averaging the countervailable subsidy rates established for each of the companies individually investigated, excluding zero and *de minimis* rates or any rates based solely on the facts available.

We preliminarily determine that Hyundai RB Co., Ltd. (Hyundai RB) and

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 41540 (July 10, 2020) (*Initiation Notice*).

[2] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,'' dated July 21, 2020.

[3] *See* Memorandum, ''Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review; 2018–2019,'' dated March 9, 2021.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Countervailing Duty Administrative Review; 2018–2019: Large Diameter Welded Pipe from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

SeAH Steel Corporation (SeAH Steel) received countervailable subsidies that are above *de minimis.* Therefore, we preliminarily determine to apply the weighted average of the net subsidy rates calculated for Hyundai RB and SeAH Steel using publicly ranged sales data submitted by the respondents to the non-selected companies. For a list of the 19 companies for which a review was requested, and which were not selected as mandatory respondents or found to be cross-owned with a mandatory respondent, *see* Appendix II to this notice.

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual net countervailable subsidy rate for Hyundai RB and SeAH. Commerce preliminarily determines that, during the POR, the net countervailable subsidy rates for the producers/exporters under review are as follows:

Company	Net countervailable subsidy rate (percent *ad valorem*)
Hyundai RB Co., Ltd	1.88
SeAH Steel Corporation [6]	0.97
Non-Examined Companies Under Review [7]	1.10

Disclosure and Public Comment

We intend to disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of this notice.[8] Interested parties may submit case briefs no later than 30 days after the date of publication of the preliminary results.[9] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the date for filing case briefs.[10] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Parties are reminded that all briefs and hearing requests must be filed electronically using ACCESS and received successfully in their entirety by 5:00 p.m. Eastern Time on the due date. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[11]

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, using Enforcement and Compliance's ACCESS system within 30 days of publication of this notice.[12] Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm the date and time of the hearing two days before the scheduled date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), Commerce intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in any written briefs, no later than 120 days after the date of publication of these preliminary results.

Assessment Rate

In accordance with 19 CFR 351.221(b)(4)(i), we preliminarily assigned subsidy rates in the amounts shown above for the producer/exporters shown above. Consistent with section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Rate

In accordance with section 751(a)(1) of the Act, Commerce intends, upon publication of the final results, to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for each of the respective companies listed above on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate (9.29 percent) applicable to the company, as appropriate.[13] These cash deposit instructions, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

These preliminary results of review are issued and published pursuant to sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213 and 351.221(b)(4).

Dated: July 30, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Period of Review
V. Diversification of Korea's Economy
VI. Subsidies Valuation Information
VII. Benchmarks and Interest Rates
VIII. Analysis of Programs
IX. Recommendation

[6] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with SeAH Steel Corporation: SeAH Holdings Corporation and ESAB SeAH Corporation. The subsidy rates apply to all cross-owned companies.

[7] *See* Appendix II.

[8] *See* 19 CFR 351.224(b).

[9] *See* 19 CFR 351.309(c)(1)(ii).

[10] *See* 19 CFR 351.309(d)(1); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006, 17007 (March 26, 2020).

[11] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[12] *See* 19 CFR 351.310(c).

[13] *See Large Diameter Welded Pipe from the Republic of Korea: Countervailing Duty Order,* 84 FR 18773 (May 2, 2019) (*Order*).

Appendix II—Table of Rates for Non-Examined Companies Under Review

Company	Net countervailable subsidy rate (percent *ad valorem*)
AJU Besteel Co., Ltd	1.10
Chang Won Bending Co., Ltd	1.10
Daiduck Piping Co., Ltd	1.10
Dong Yang Steel Pipe Co., Ltd	1.10
Dongbu Incheon Steel Co., Ltd	1.10
EEW KHPC Co., Ltd	1.10
EEW Korea Co., Ltd	1.10
HiSteel Co., Ltd	1.10
Husteel Co., Ltd.[14]	1.10
Hyundai Steel Company[15]	1.10
Kiduck Industries Co., Ltd	1.10
Kum Kang Kind. Co., Ltd	1.10
Kumsoo Connecting Co., Ltd	1.10
Nexteel Co., Ltd	1.10
Samkang M&T Co., Ltd	1.10
Seonghwa Industrial Co., Ltd	1.10
SIN–E B&P Co., Ltd	1.10
Steel Flower Co., Ltd	1.10
WELTECH Co., Ltd	1.10

[FR Doc. 2021–16726 Filed 8–4–21; 8:45 am]

BILLING CODE 3510–DS–P

[14] As stated in the *Initiation Notice,* subject merchandise both produced and exported by Husteel Co., Ltd. (Husteel) is excluded from the countervailing duty order. *See Order.* Thus, Husteel's inclusion in this administrative review is limited to entries for which Husteel was the producer or exporter of the subject merchandise, but not both the producer and exporter.

[15] As stated in the *Initiation Notice,* subject merchandise both produced and exported by Hyundai Steel Company (Hyundai Steel) and subject merchandise produced by Hyundai Steel and exported by Hyundai Corporation are excluded from the countervailing duty order. *See Order.* Thus, Hyundai Steel's inclusion in this administrative review is limited to entries for which Hyundai Steel was not the producer and exporter of the subject merchandise and for which Hyundai Steel was not the producer and Hyundai Corporation was not the exporter of subject merchandise.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–985]

Xanthan Gum From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review, Partial Rescission of the Antidumping Duty Administrative Review, and Preliminary Determination of No Shipments; 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that except for one respondent for which Commerce calculated a zero percent dumping margin, the eight respondents under review either made sales of subject merchandise at prices below normal value (NV) during the period of review (POR) July 1, 2019, through June 30, 2020, did not ship subject merchandise to the United States during the POR, or were not entitled to a separate rate. Also, Commerce is rescinding this review with respect to one company. We invite interested parties to comment on these preliminary results.

DATES: Applicable August 5, 2021.

FOR FURTHER INFORMATION CONTACT: Kristen Ju or Abdul Alnoor, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3699 and (202) 482–4554, respectively.

SUPPLEMENTARY INFORMATION:

Background

This administrative review is being conducted in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). On July 1, 2020, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty (AD) order on xanthan gum from the People's Republic of China (China).[1] Commerce published the notice of initiation of this administrative review on September 3, 2020.[2] On March 5, 2021, Commerce extended the deadline for the preliminary results of this review by a total of 119 days, to July 30, 2021.[3]

On October 26, 2020, Commerce selected two exporters to individually examine as mandatory respondents,[4] Meihua,[5] and Fufeng.[6] During the course of this review, the mandatory respondents responded to Commerce's questionnaire and supplemental questionnaires, the petitioner (CP Kelco U.S., Inc.) commented on certain responses, and other companies for which Commerce initiated the review filed either no-shipment claims or applications or certifications for separate rates status with Commerce. For details regarding the events that occurred subsequent to the initiation of the review, *see* the Preliminary Decision Memorandum.

Scope of the Order

The product covered by the order includes dry xanthan gum, whether or not coated or blended with other products. Xanthan gum is included in this order regardless of physical form, including, but not limited to, solutions, slurries, dry powders of any particle size, or unground fiber.

Merchandise covered by the scope of the order is classified in the Harmonized Tariff Schedule of the United States at subheading 3913.90.20. This tariff classification is provided for convenience and customs purposes; however, the written description of the scope is dispositive.

A full description of the scope of the order is contained in the Preliminary Decision Memorandum.

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 85 FR 39531 (July 1, 2020).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 54983 (September 3, 2020).

[3] *See* Memorandum, ''Xanthan Gum from the People's Republic of China: Extension of Deadline for Preliminary Results of the 2019–2020 Antidumping Duty Administrative Review,'' dated March 5, 2021.

[4] *See* Memorandum, ''Selection of Respondents for the 2019–2020 Administrative Review of the Antidumping Duty Order on Xanthan Gum from the People's Republic of China,'' dated October 26, 2020.

[5] Meihua refers to a single entity, which includes Meihua Group International Trading (Hong Kong) Limited, Langfang Meihua Biotechnology Co., Ltd., and Xinjiang Meihua Amino Acid Co., Ltd. (collectively, Meihua). For additional information, *see* ''Decision Memorandum for the Preliminary Results of the Seventh Antidumping Duty Administrative Review of Xanthan Gum from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[6] Fufeng refers to a single entity, which includes Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.), Shandong Fufeng Fermentation Co., Ltd., and Xinjiang Fufeng Biotechnologies Co., Ltd. (collectively, Fufeng). For additional information, *see* the Preliminary Decision Memorandum.

Preliminary Determination of No Shipments

On September 28, 2020, and October 2, 2020, Shanghai Smart Chemicals Co., Ltd. (Shanghai Smart) and Deosen Biochemical Ltd. (Deosen Biochemical), respectively, timely filed certifications that they did not export or sell subject merchandise to the United States during the POR and that there were no entries of their subject merchandise into the United States during the POR. Based on an analysis of information from U.S. Customs and Border Protection (CBP) and Shanghai Smart's no shipment certification, Commerce preliminarily determines that Shanghai Smart did not have shipments of subject merchandise to the United States during the POR.[7]

However, Commerce preliminarily determines that Deosen Biochemical had reviewable transactions during the POR.[8] For additional information regarding this determination, see the Preliminary Decision Memorandum.

Consistent with Commerce's practice in non-market economy (NME) cases, we are not rescinding this administrative review with respect to Shanghai Smart, but intend to complete the review and issue appropriate instructions to CBP based on the final results of the review.[9]

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 or parties that requested a review withdraw their request(s) within 90 days of the publication date of the notice of initiation of the requested review in the **Federal Register**. In December 2020, parties timely withdrew their requests for an AD administrative review of CP Kelco (Shandong) Biological Company Limited (CP Kelco Shandong).[10] Because all requests for reviews of CP Kelco Shandong were timely withdrawn, in accordance with 19 CFR 351.213(d)(1), Commerce is rescinding this review of the AD order on xanthan gum from China with respect to CP Kelco Shandong.

Use of Adverse Facts Available

Pursuant to section 776(a) and (b) of the Act, Commerce has preliminarily relied upon facts otherwise available, with adverse inferences, to determine the dumping margin assigned to Meihua. For further information, *see* ''Application of Facts Available With Adverse Inferences'' in the Preliminary Decision Memorandum; *see also* the Meihua Preliminary AFA Memorandum.[11]

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Act. We calculated export prices and constructed export prices in accordance with section 772 of the Act. Because China is an NME country within the meaning of section 771(18) of the Act, we calculated NV in accordance with section 773(c) of the Act.

For a full description of the methodology underlying the preliminary results of review, *see* the Preliminary Decision Memorandum, which is hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov*. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. A list of sections in the Preliminary Decision Memorandum is in the appendix to this notice.

Separate Rates

In all proceedings involving NME countries, Commerce maintains a rebuttable presumption that all companies within an NME are subject to government control and, thus, should be assessed a single weighted-average dumping margin unless the company can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its exports so that it is entitled to separate rate status.[12] Commerce preliminarily determines that the information placed on the record by Jianlong Biotechnology Co. Ltd (formerly, Inner Mongolia Jianlong Biochemical Co., Ltd.) (Jianlong), Deosen Biochemical and Deosen Biochemical (Ordos) Ltd. (collectively, Deosen), Meihua, and Fufeng demonstrates that these companies are entitled to separate rate status.

However, Commerce preliminarily determines that A.H.A. International Co., Ltd., Hebei Xinhe Biochemical Co., Ltd., Greenhealth International Co., Ltd. (Hong Kong), and Nanotech Solutions SDN BHD did not demonstrate their eligibility for separate rates status because they did not file a separate rate application or separate rate certification with Commerce. Therefore, we are preliminarily treating A.H.A. International Co., Ltd., Hebei Xinhe Biochemical Co., Ltd., Greenhealth International Co., Ltd. (Hong Kong), and Nanotech Solutions SDN BHD as part of the China-wide entity. Because no party requested a review of the China-wide entity, the entity is not under review and the entity's rate (*i.e.,* 154.07 percent) is not subject to change in this review. For additional information, *see* the Preliminary Decision Memorandum.

Dumping Margins for Separate Rate Companies

The statute and Commerce's regulations do not identify the dumping margin to apply to respondents not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when determining the dumping margin for respondents that are not individually examined in an administrative review. Section 735(c)(5)(A) of the Act states that the all-others rate should be calculated by averaging the weighted-average dumping margins for individually-examined respondents, excluding dumping margins that are zero, *de minimis,* or based entirely on facts available. Where the dumping margins for individually examined respondents are all zero, *de minimis,* or

[7] *See* Memorandum, ''Antidumping Duty Administrative Review of Xanthan Gum from the People's Republic of China: Automated Commercial System Shipment Query,'' dated September 23, 2020 (CBP Data); *see also* ''Xanthan Gum from China exported by Shanghai Smart Chemicals Co. Ltd. during the period 07/01/2019 through 06/30/2020,'' dated April 22, 2021.

[8] *See* CBP Data.

[9] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011); and the ''Assessment Rates'' section, below.

[10] *See* CP Kelco Shandong's Letter, ''Xanthan Gum from the People's Republic of China: CP Kelco (Shandong) Biological Company Limited's Withdrawal of Request for Administrative Review,'' dated December 1, 2020; Deosen Biochemical and Deosen Biochemical (Ordos) Ltd. (collectively, Deosen) submitted a timely withdrawal of its review request, however, because the petitioner did not withdraw its request for review of Deosen, Commerce is continuing its review of Deosen.

[11] *See* Memorandum, ''Preliminary Results Memorandum: Application of Adverse Facts Available to Meihua,'' dated concurrently with this memorandum (Meihua Preliminary AFA Memorandum) for Commerce's full analysis, which includes business proprietary information.

[12] See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China, 71 FR 53079, 53082 (September 8, 2006); Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, 71 FR 29303, 29307 (May 22, 2006).

based entirely on facts available, section 735(c)(5)(B) of the Act provides that Commerce may use ''any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.''

We preliminarily calculated a zero percent dumping margin for one of the mandatory respondents in this review, Fufeng, and we preliminarily based the other mandatory respondent's, Meihua's, dumping margin on total AFA. Therefore, we assigned the separate rate respondents a dumping margin equal to the simple average of the dumping margins for Fufeng and Meihua, consistent with the guidance in section 735(c)(5)(B) of the Act. For additional information, *see* the Preliminary Decision Memorandum.

Preliminary Results of Review

We are assigning the following dumping margins to the firms listed below for the period July 1, 2019, through June 30, 2020:

Producers/exporters	Weighted-average dumping margin (percent)
Meihua Group International Trading (Hong Kong) Limited/Langfang Meihua Biotechnology Co., Ltd./Xinjiang Meihua Amino Acid Co., Ltd	154.07
Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.)/Shandong Fufeng Fermentation Co., Ltd./Xinjiang Fufeng Biotechnologies Co., Ltd	0.00
Review-Specific Average Rate Applicable to the Following Companies:	
Jianlong Biotechnology Co., Ltd. (formerly, Inner Mongolia Jianlong Biochemical Co., Ltd)	77.04
Deosen Biochemical (Ordos) Ltd./Deosen Biochemical Ltd	77.04

Disclosure and Public Comment

Commerce intends to disclose to parties to the proceeding the calculations performed for these preliminary results of review within five days of the date of publication of this notice in the **Federal Register** in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of these preliminary results of review in the **Federal Register**.[13] Rebuttal briefs may be filed with Commerce no later than seven days after case briefs are due and may respond only to arguments raised in the case briefs.[14] A table of contents, list of authorities used, and an executive summary of issues should accompany any briefs submitted to Commerce. The summary should be limited to five pages total, including footnotes.[15]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice in the **Federal Register**. Requests for a hearing should contain: (1) The requesting party's name, address, and telephone number; (2) the number of individuals associated with the requesting party that will attend the hearing and whether any of those individuals is a foreign national; and (3) a list of the issues the party intends to discuss at the hearing. Oral arguments at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, Commerce will announce the date and time of the hearing. Parties should confirm by telephone the date and time of the hearing two days before the scheduled hearing date.

All submissions, with limited exceptions, must be filed electronically using ACCESS.[16] An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5 p.m. Eastern Time (ET) on the due date.[16] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information until further notice.[17] Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, within 120 days of publication of these preliminary results of review in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results of review, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[18] Commerce intends to issue appropriate assessment instructions to CBP 35 days after the publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

We will calculate importer/customer-specific assessment rates equal to the ratio of the total amount of dumping calculated for examined sales to a particular importer/customer to the total entered value of those sales, in accordance with 19 CFR 351.212(b)(1).[19] Where the respondent reported reliable entered values, Commerce intends to calculate importer/customer-specific *ad valorem* assessment rates by dividing the total amount of dumping calculated for all reviewed U.S. sales to the importer/customer by the total entered value of the merchandise sold to the importer/customer.[20] Where the respondent did not report entered values, Commerce will calculate importer/customer-specific assessment rates by dividing the total amount of dumping calculated for all reviewed U.S. sales to the importer/customer by the total quantity of those sales. Commerce will calculate an estimated

[13] *See* 19 CFR 351.309(c)(ii).

[14] *See* 19 CFR 351.309(d).

[15] *See* 19 CFR 351.309(c)(2), (d)(2).

[16] *See* 19 CFR 351.303 (for general filing requirements); *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[17] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 29615 (May 18, 2020); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[18] *See* 19 CFR 351.212(b)(1).

[19] We applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[20] *See* 19 CFR 351.212(b)(1).

ad valorem importer/customer-specific assessment rate to determine whether the per-unit assessment rate is *de minimis;* however, Commerce will use the per-unit assessment rate where entered values were not reported.[21] Where an importer/customer-specific *ad valorem* assessment rate is not zero or *de minimis,* Commerce will instruct CBP to collect the appropriate duties at the time of liquidation. Where either the respondent's *ad valorem* weighted-average dumping margin is zero or *de minimis,* or an importer/customer-specific *ad valorem* assessment rate is zero or *de minimis,*[22] Commerce will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For respondents not individually examined in this administrative review that qualified for a separate rate, the assessment rate will be equal to the weighted-average dumping margin assigned to the respondent in the final results of this review.[23]

Pursuant to Commerce's refinement to its practice, for sales that were not reported in the U.S. sales database submitted by a respondent individually examined during this review, Commerce will instruct CBP to liquidate the entry of such merchandise at the dumping margin assigned to the China-wide entity.[24] Additionally, where Commerce determines that an exporter under review had no shipments of subject merchandise to the United States during the POR, any suspended entries of subject merchandise that entered under that exporter's CBP case number during the POR will be liquidated at the dumping margin assigned to the China-wide entity.

In accordance with section 751(a)(2)(C) of the Act, the final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated antidumping duties, where applicable.

[21] *Id.*

[22] *See* 19 CFR 351.106(c)(2).

[23] *See Drawn Stainless Steel Sinks from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments: 2014–2015,* 81 FR 29528 (May 12, 2016), and accompanying Preliminary Decision Memorandum at 10–11, unchanged in *Drawn Stainless Steel Sinks from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; Final Determination of No Shipments; 2014–2015,* 81 FR 54042 (August 15, 2016).

[24] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), for a full discussion of this practice.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of xanthan gum from China entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the final results of this administrative review in the **Federal Register**, as provided for by section 751(a)(2)(C) of the Act: (1) For companies granted a separate rate in the final results of this review, the cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this review for the company (except, if the rate is zero or *de minimis,* then a cash deposit rate of zero will be required); (2) for previously investigated or reviewed China and non-China exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all China exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity, which is 154.07 percent; and (4) for all non-China exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to China exporter(s) that supplied that non-China exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(l) and 777(i)(l) of the Act and 19 CFR 351.213 and 351.221(b)(4).

Dated: July 30, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

List of Sections in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Review
IV. Extension of the Preliminary Results
V. Scope of the Order
VI. Partial Rescission of Administrative Review
VII. Preliminary Determination of No Shipments
VIII. Selection of Respondents
IX. Application of Facts Available With Adverse Inferences
X. Single Entity Treatment
XI. Discussion of Methodology
XII. Recommendation

[FR Doc. 2021–16727 Filed 8–4–21; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–878]

Certain Corrosion-Resistant Steel Products From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that certain corrosion-resistant steel products (CORE) from the Republic of Korea (Korea) were sold in the United States at less than normal value (NV) during the period of review of July 1, 2019, through June 30, 2020.

DATES: Applicable August 5, 2021.

FOR FURTHER INFORMATION CONTACT: Jaron Moore or Brian Smith, 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) 482–3640 or (202) 482–1766, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 3, 2016, Commerce published the antidumping duty order on CORE from Korea.[1] Commerce initiated this administrative review on September 3, 2020.[2] This review covers

[1] *See Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Australia, the Republic of Korea, and the Republic of Turkey and Antidumping Duty Orders,* 81 FR 67962 (October 3, 2016) (*Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 54983 (September 3, 2020) (*Initiation Notice*).

nine companies,[3] of which we selected Dongkuk and Hyundai as mandatory respondents.[4]

On March 18, 2021, we extended the deadline for the preliminary results of this review until July 30, 2021.[5] For a detailed description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[6]

Scope of the Order

The merchandise covered by the *Order* is CORE from Korea. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.[7]

Methodology

Commerce is conducting this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Constructed export price and export price were calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed at *http://enforcement.trade.gov/frn/index.html.* A list of the topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice.

Rate for Non-Examined Companies

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely {on the basis of facts available}.''

In this review, the preliminarily estimated weighted-average dumping margin for Dongkuk is not zero, *de minimis,* or based entirely on facts otherwise available, whereas Hyundai's preliminary estimated weighted-average dumping margin is zero. Therefore, Commerce has preliminarily assigned Dongkuk's margin to the non-examined companies in this administrative review in accordance with its practice.[8]

Preliminary Results

We preliminarily determine the following weighted-average dumping margins for the period July 1, 2019, through June 30, 2020:

Exporter/producer	Weighted-average dumping margin (percent)
Dongkuk Steel Mill Co., Ltd	0.59
Hyundai Steel Company	0.00
KG Dongbu Steel Co., Ltd. (formerly Dongbu Steel Co., Ltd.)/Dongbu Incheon Steel Co., Ltd.[9]	0.59
POSCO	0.59
POSCO Daewoo Corporation	0.59
POSCO International Corporation (formerly POSCO Daewoo Corporation)	0.59
POSCO Coated & Color Steel Co., Ltd	0.59

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and U.S Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. For any individually examined respondent whose weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review and the respondent reported entered values, we will calculate importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of dumping calculated for the examined sales made during the POR to each importer and the total entered value of those same sales, in accordance with 19 CFR 351.212(b)(1). If the respondent has not reported entered values, we will calculate a per-unit assessment rate for each importer

[3] The nine companies are: Dongbu Incheon Steel Co., Ltd., Dongbu Steel Co., Ltd., KG Dongbu Steel Co., Ltd. (formerly Dongbu Steel Co., Ltd.), Dongkuk Steel Mill Co., Ltd. (Dongkuk), Hyundai Steel Company (Hyundai), POSCO, POSCO Coated & Color Steel Co., Ltd., POSCO Daewoo Corporation, and POSCO International Corporation (formerly, POSCO Daewoo Corporation).

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of Antidumping duty Administrative Review: Certain Corrosion-Resistant Steel Products from the Republic of Korea, 2019–2020,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See* Memorandum, ''Certain Corrosion-Resistant Steel Products from the Republic of Korea: Extension of Deadline for Preliminary Results of 2019–2020 Antidumping Duty Administrative Review,'' dated March 18, 2021.

[6] *See* Preliminary Decision Memorandum.

[7] *Id.*

[8] *See, e.g., Certain Corrosion-Resistant Steel Products from Taiwan: Final Results of the Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018–2019,* 86 FR 28554, 28555 (May 27, 2021).

[9] In a recently completed changed circumstances review, Commerce found that KG Dongbu Steel Co., Ltd. is the successor-in-interest to Dongbu Steel Co., Ltd. for purposes of determining antidumping cash deposits and liabilities. *See Certain Cold-Rolled Steel Flat Products and Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Antidumping and Countervailing Duty Changed Circumstances Reviews,* 86 FR 10922 (February 23, 2021). Also, in the previous segment of this proceeding, Dongbu Steel Co., Ltd. and Dongbu Incheon Steel Co., Ltd. were collapsed and treated as a single entity for antidumping purposes. *See Certain Corrosion-Resistant Steel Products from the Republic of Korea: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2018–2019,* 85 FR 74987 (November 24, 2020) (unchanged in *Corrosion-Resistant Steel Products From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018–2019,* 86 FR 28571 (May 27, 2021)). As the facts have not changed with respect to these companies, we continue to treat them as a single entity for purposes of this review.

by dividing the total amount of dumping calculated for the examined sales made to that importer by the total quantity associated with those transactions. Where an importer-specific *ad valorem* assessment rate is zero or *de minimis* in the final results of review, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties in accordance with 19 CFR 351.106(c)(2). If a respondent's weighted-average dumping margin is zero or *de minimis* in the final results of review, we will instruct CBP not to assess duties on any of its entries in accordance with the *Final Modification for Reviews, i.e.,* ''{w}here the weighted-average margin of dumping for the exporter is determined to be zero or *de minimis,* no antidumping duties will be assessed.'' [10]

In accordance with Commerce's ''automatic assessment'' practice, for entries of subject merchandise during the POR produced by any of the above-referenced respondents for which they did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate those entries at the all-others rate in the original less-than-fair-value (LTFV) investigation (as amended) [11] if there is no rate for the intermediate company(ies) involved in the transaction.[12]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent, and therefore *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated companies not participating in this review, the cash deposit will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, or the underlying investigation, but the producer is, then the cash deposit rate will be the rate established for the most recent segment for the producer of the merchandise; and (4) the cash deposit rate for all other producers and exporters will continue to be 8.31 percent, the all-others rate established in the LTFV investigation (as amended).[13] These deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

We intend to disclose the calculations performed for these preliminary results of review to interested parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, the content of which is limited to issues raised in the case briefs, may be filed no later than seven days after the date for filing case briefs.[14] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[15] Case and rebuttal briefs should be filed using ACCESS [16] and must be served on interested parties.[17] Executive summaries should be limited to five pages total, including footnotes.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via Commerce's electronic records system, ACCESS, within 30 days after the date of publication of this notice.[18] Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold a hearing at a time and date to be determined.[19] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

All submissions to Commerce must be filed using ACCESS [20] and must be served on interested parties.[21] An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time on the date that the document is due. Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.[22]

Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any case or rebuttal briefs, no later than 120 days after the date of publication of this notice, unless this deadline is extended.[23]

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections

[10] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101, 8102 (February 14, 2012) (*Final Modification for Reviews*).

[11] *See Order; Certain Corrosion-Resistant Steel Products from the Republic of Korea: Notice of Court Decision Not in Harmony with Final Determination of Investigation and Notice of Amended Final Results,* 83 FR 39054 (August 8, 2018) (*Timken and Amended Final Results*).

[12] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[13] *See Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders,* 81 FR 48390 (July 25, 2016), as amended by *Timken and Amended Final Results.*

[14] *See* 19 CFR 351.309(d)(1) and (2); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020).

[15] *See* 19 CFR 351.309(c)(2) and (d)(2).

[16] *See generally* 19 CFR 351.303.

[17] *See* 19 CFR 351.303(f).

[18] *See* 19 CFR 351.310(c).

[19] *See* 19 CFR 351.310(d).

[20] *See* 19 CFR 351.303.

[21] *See* 19 CFR 351.303(f).

[22] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[23] *See* section 751(a)(3)(A) of the Act; and 19 CFR 351.213(h).

751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: July 30, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Comparisons to Normal Value
V. Date of Sale
VI. Export Price and Constructed Export Price
VII. Normal Value
VIII. Currency Conversion
IX. Recommendation

[FR Doc. 2021–16725 Filed 8–4–21; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Interim Procedures for Considering Requests Under the Commercial Availability Provision of the United States-Colombia Trade Promotion Agreement (U.S.-Colombia TPA)

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before October 4, 2021.

ADDRESSES: Interested persons are invited to submit written comments to Ms. Laurie Mease, International Trade Specialist, International Trade Administration, Office of Textiles and Apparel (OTEXA), by email to *OTEXA_Colombia@trade.gov,* or *PRAcomments@doc.gov*. Please reference OMB Control Number 0625–0272 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Ms. Laurie Mease, International Trade Specialist, International Trade Administration, Office of Textiles and Apparel (OTEXA), (202) 482–2043 or by email to *Laurie.Mease@trade.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Title II, Section 203(o) of the United States-Colombia Trade Promotion Agreement Implementation Act (the ''Act'') [Pub. L. 112–42] implements the commercial availability provision provided for in Article 3.3 of the United States-Colombia Trade Promotion Agreement (the ''Agreement''). The Agreement entered into force on May 15, 2012. Subject to the rules of origin in Annex 4.1 of the Agreement, pursuant to the textile provisions of the Agreement, fabric, yarn, and fiber produced in Colombia or the United States and traded between the two countries are entitled to duty-free tariff treatment. Annex 3–B of the Agreement also lists specific fabrics, yarns, and fibers that the two countries agreed are not available in commercial quantities in a timely manner from producers in Colombia or the United States. The fabrics listed are commercially unavailable fabrics, yarns, and fibers, which are also entitled to duty-free treatment despite not being produced in Colombia or the United States.

The list of commercially unavailable fabrics, yarns, and fibers may be changed pursuant to the commercial availability provision in Chapter 3, Article 3.3, Paragraphs 5–7 of the Agreement. Under this provision, interested entities from Colombia or the United States have the right to request that a specific fabric, yarn, or fiber be added to, or removed from, the list of commercially unavailable fabrics, yarns, and fibers in Annex 3–B of the Agreement.

Chapter 3, Article 3.3, paragraph 7 of the Agreement requires that the President ''promptly'' publish procedures for parties to exercise the right to make these requests. Section 203(o)(4) of the Act authorizes the President to establish procedures to modify the list of fabrics, yarns, or fibers not available in commercial quantities in a timely manner in either the United States or Colombia as set out in Annex 3–B of the Agreement. The President delegated the responsibility for publishing the procedures and administering commercial availability requests to the Committee for the Implementation of Textile Agreements (''CITA''), which issues procedures and acts on requests through the U.S. Department of Commerce, Office of Textiles and Apparel (''OTEXA'') (See Proclamation No. 8818, 77 FR 29519, May 18, 2012).

The intent of the U.S.-Colombia TPA Commercial Availability Procedures is to foster the use of U.S. and regional products by implementing procedures that allow products to be placed on or removed from a product list, on a timely basis, and in a manner that is consistent with normal business practice. The procedures are intended to facilitate the transmission of requests; allow the market to indicate the availability of the supply of products that are the subject of requests; make available promptly, to interested entities and the public, information regarding the requests for products and offers received for those products; ensure wide participation by interested entities and parties; allow for careful review and consideration of information provided to substantiate requests, responses and rebuttals; and provide timely public dissemination of information used by CITA in making commercial availability determinations.

CITA must collect certain information about fabric, yarn, or fiber technical specifications and the production capabilities of Colombian and U.S. textile producers to determine whether certain fabrics, yarns, or fibers are available in commercial quantities in a timely manner in the United States or Colombia, subject to Section 203(o) of the Act.

II. Method of Collection

Participants in a commercial availability proceeding must submit public versions of their Requests, Responses or Rebuttals electronically (via email) for posting on OTEXA's website. Confidential versions of those submissions which contain business confidential information must be delivered in hard copy to the Office of Textiles and Apparel (OTEXA) at the U.S. Department of Commerce.

III. Data

OMB Control Number: 0625–0272.

Form Number(s): None.

Type of Review: Regular submission.

Affected Public: Business or for-profit organizations.

Estimated Number of Respondents: 16.

Estimated Time per Response: 8 hours per Request, 2 hours per Response, and 1 hour per Rebuttal.

Estimated Total Annual Burden Hours: 89.

Estimated Total Annual Cost to Public: $5,340.

Respondent's Obligation: Voluntary.

Legal Authority: Title II, Section 203(o) of the United States-Colombia Trade Promotion Agreement Implementation Act (Pub. L. 112–42).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

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

[FR Doc. 2021–16323 Filed 8–4–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–888]

Certain Carbon and Alloy Steel Cut-to-Length Plate From the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, and Intent To Rescind Review, in Part; 2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that POSCO and certain other producers/exporters of certain carbon and alloy steel cut-to-length plate (CTL plate) from the Republic of Korea (Korea) received *de minimis* net countervailable subsidies during the January 1, 2019, through December 31, 2019, period of review (POR). Interested parties are invited to comment on these preliminary results.

DATES: Applicable August 5, 2021.

FOR FURTHER INFORMATION CONTACT: George Ayache or Faris Montgomery, 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) 482–2623 and (202) 482–1537, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 10, 2020, Commerce published a notice of initiation of an administrative review of the countervailing duty (CVD) order on CTL plate from Korea.[1] On July 21, 2020, Commerce tolled all preliminary and final results deadlines in administrative reviews by 60 days.[2] On March 8, 2021, Commerce extended the deadline for the preliminary results of this review to no later than July 30, 2021.[3]

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[4] A list of topics discussed in the Preliminary Decision Memorandum is included at Appendix I. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov*. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*.

Scope of the Order

The merchandise covered by the order is CTL plate. For a complete description of the scope of the order, *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(l)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[5] For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Intent To Rescind Administrative Review, in Part

On August 6, 2020, Hyundai Steel Company timely submitted a no shipment certification.[6] Because there is no evidence on the record to indicate that Hyundai Steel Company had entries, exports, or sales of subject merchandise to the United States during the POR, and U.S. Customs and Border Protection (CBP) did not provide Commerce with any contradictory information, we intend to rescind the review with respect to Hyundai Steel Company in accordance with 19 CFR 351.213(d)(3).

Companies Not Selected for Individual Review

The statute and Commerce's regulations do not directly address the CVD rates to be applied to companies not selected for individual examination where Commerce limits its examination in an administrative review pursuant to

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 41540 (July 10, 2020).

[2] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,'' dated July 21, 2020.

[3] *See* Memorandum, ''Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review; 2019,'' dated March 8, 2021.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Countervailing Duty Administrative Review; 2019: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[6] *See* Hyundai Steel Company's Letter, ''Notice of No Sales,'' dated August 6, 2020.

section 777A(e)(2) of the Act. However, Commerce normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation. Section 777A(e)(2) of the Act also provides that ''the individual countervailable subsidy rates determined under subparagraph (A) shall be used to determine the all-others rate under section 705(c)(5) {of the Act}.'' Section 705(c)(5)(A) of the Act states that, in general, for companies not investigated, we will determine an all-others rate by weight-averaging the countervailable subsidy rates established for each of the companies individually investigated, excluding any zero and *de minimis* rates, and any rates based solely on the facts available. Additionally, section 705(c)(5)(A)(ii) provides that when the countervailable subsidy rates established for all exporters and producers individually investigated are zero or *de minimis* rates, or based solely on facts available, Commerce may use any reasonable method to establish a rate for those companies not individually investigated, including averaging the weighted average countervailable subsidy rates determined for the exporters and producers individually investigated. For the preliminary results of this review, we calculated a *de minimis* net countervailable subsidy rate for POSCO, the sole mandatory respondent. As a result, for the reasons discussed in the Preliminary Decision Memorandum, we have preliminarily determined that it is reasonable to assign to the companies not selected for individual examination in this review, the *de minimis* net countervailable subsidy rate calculated for POSCO in this review. For a list of the 40 companies for which a review was requested, and which were not selected as mandatory respondents, *see* Appendix II to this notice.

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), Commerce preliminarily determines that, during the POR, the net countervailable subsidy rates for the producers/exporters under review are as follows:

Company	Net countervailable subsidy rate (percent *ad valorem*) (*de minimis*)
POSCO[7]	0.23
Non-Examined Companies Under Review[8]	0.23

Disclosure and Public Comment

We intend to disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.[9] Interested parties will be notified of the timeline for the submission of case briefs at a later date.[10] Rebuttal briefs, limited to issues raised in the case briefs, may be submitted not later than seven days after the time limit for filing case briefs.[11] Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[12]

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, using Enforcement and Compliance's ACCESS system within 30 days of publication of this notice.[13] Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm the date and time of the hearing two days before the scheduled date.

Parties are reminded that all briefs and hearing requests must be filed electronically using ACCESS and received successfully in their entirety by 5:00 p.m. Eastern Time on the due date. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[14]

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), Commerce intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in any briefs, no later than 120 days after the date of publication of these preliminary results.

Assessment Rate

Consistent with section 751(a)(2)(C) of the Act, upon issuance of the final results, Commerce shall determine, and CBP shall assess, countervailing duties on all appropriate entries covered by this review.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Rate

Pursuant to section 751(a)(2)(C) of the Act, Commerce intends, upon publication of the final results, to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts indicated above with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review, except, where the rate calculated in the final results is zero or *de minimis,* no cash deposit will be required. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate (4.31 percent) applicable to the company, as appropriate.[15] These cash deposit instructions, when imposed, shall remain in effect until further notice.

[7] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with POSCO: Pohang Scrap Recycling Distribution Center Co. Ltd.; POSCO Chemical; POSCO International; POSCO M-Tech; POSCO Nippon Steel RHF Joint Venture Co., Ltd.; and POSCO Terminal. The subsidy rate applies to all cross-owned companies.

[8] *See* Appendix II.

[9] *See* 19 CFR 351.224(b).

[10] *See* 19 CFR 351.309(c)(1)(ii); *see also* 19 CFR 351.303 (for general filing requirements).

[11] *See* 19 CFR 351.309(d)(1); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006, 17007 (March 26, 2020).

[12] *See* 19 CFR 351.309(c)(2) and 351.309(d)(2).

[13] *See* 19 CFR 351.310(c).

[14] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[15] *See Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Countervailing Duty Order,* 82 FR 24103 (May 25, 2017).

Notification to Interested Parties

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213 and 351.221(b)(4).

Dated: July 30, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Period of Review
V. Diversification of Korea's Economy
VI. Intent To Rescind, in Part, the Administrative Review
VII. Rate for Non-Examined Companies
VIII. Subsidies Valuation Information
IX. Benchmarks and Interest Rates
X. Analysis of Programs
XI. Recommendation

Appendix II

Non-Examined Companies Under Review

1. BDP International
2. Blue Track Equipment
3. Boxco
4. Bukook Steel Co., Ltd.
5. Buma CE Co., Ltd.
6. China Chengdu International Techno-Economic Cooperation Co., Ltd.
7. Daehan I.M. Co., Ltd.
8. Daehan Tex Co., Ltd.
9. Daelim Industrial Co., Ltd.
10. Daesam Industrial Co., Ltd.
11. Daesin Lighting Co., Ltd.
12. Daewoo International Corp.
13. Dong Yang Steel Pipe
14. Dongbu Steel Co., Ltd.
15. Dongkuk Industries Co., Ltd.
16. Dongkuk Steel Mill Co., Ltd.
17. EAE Automotive Equipment
18. EEW KHPC Co., Ltd.
19. Eplus Expo Inc.
20. GS Global Corp
21. Haem Co., Ltd.
22. Han Young Industries
23. Hyosung Corp.
24. Jinmyung Frictech Co., Ltd.
25. Khana Marine Ltd.
26. Kindus Inc.
27. Korean Iron and Steel Co., Ltd.
28. Kyoungil Precision Co., Ltd.
29. Menics
30. Qian'an Rentai Metal Products Co., Ltd.
31. Samsun C&T Corp.
32. Shinko
33. Shipping Imperial Co., Ltd.
34. Sinchang Eng Co., Ltd.
35. SK Networks Co., Ltd.
36. SNP Ltd.
37. Steel N People Ltd.
38. Summit Industry
39. Sungjin Co., Ltd.
40. Young Sun Steel

[FR Doc. 2021–16724 Filed 8–4–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB299]

Marine Mammals; File No. 25786

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that NMFS' Southwest Fisheries Science Center, 8901 La Jolla Shores Drive, La Jolla, CA 92037 (Responsible Party: George Watters, Ph.D.), has applied in due form for a permit to conduct research on six species of Antarctic pinnipeds.

DATES: Written, telefaxed, or email comments must be received on or before September 7, 2021.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 25786 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 25786 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Sara Young or Carrie Hubard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant proposes to take 6 pinniped species in the Antarctic Peninsula region, primarily at Cape Shirreff, Livingston Island, as part of a long-term ecosystem monitoring and research program established in 1986. The six species are: Antarctic fur seals (*Arctocephalus gazella*), southern elephant seals (*Mirounga leonina*), crabeater seals (*Lobodon carcinophaga*), leopard seals (*Hydrurga leptonyx*), Ross seals (*Ommatophoca rossii*), and Weddell seals (*Leptonychotes weddellii*). The applicant also requests permission to import tissue samples collected from any animals captured and from salvaged carcasses of any species of pinniped or cetacean found in the study area.

The applicant requests annual capture of: 500 Antarctic fur seal adults and juveniles; 400 Antarctic fur seal pups; 30 leopard seal adults and juveniles; and 30 Weddell seal adults and juveniles. Research on captured animals would include drug administration, biological sampling, attachment of scientific instruments, application of marks (flipper tags, hair bleach or dye), morphometric measurement, and ultrasound. An additional 800 Antarctic fur seals, 40,000 southern elephant seals, 318,700 crabeater seals, 1,320 leopard seals, 30,200 Weddell seals, and 5,256 Ross seals would be taken annually by harassment during aerial and ground surveys, including behavioral observations, photo-identification, and use of unmanned aircraft systems. The applicant has requested an annual incidental mortality allowance of: Three Antarctic fur seal adults or juveniles; three Antarctic fur seal pups; two leopard seal adults or juveniles; and two Weddell seal adults or juveniles. The research would occur over five years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: August 2, 2021.

Amy Sloan,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2021–16744 Filed 8–4–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB295]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council's is convening its Scientific and Statistical Committee (SSC) via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Tuesday, August 24, 2021, beginning at 9 a.m. Webinar registration information: *https://attendee.gotowebinar.com/register/9543743103899824 78.* Call in information: +1 (415) 655–0052, Access Code: 131–042–664.

ADDRESSES: *Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Scientific and Statistical Committee will meet to review recent stock assessment information from the U.S/Canada Transboundary Resource Assessment Committee and information provided by the Council's Groundfish Plan Development Team (PDT) and recommend the overfishing level (OFL) and acceptable biological catch (ABC) for Georges Bank yellowtail flounder for the 2022 and 2023 fishing years. Other business will be discussed as necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: August 2, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–16728 Filed 8–4–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB298]

Marine Mammals; File No. 25770

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the Institute of Marine Sciences, University of California at Santa Cruz, Santa Cruz, CA 95064 (Responsible Party: Daniel Costa, Ph.D.), has applied in due form for a permit to conduct research on Antarctic pinniped species.

DATES: Written, telefaxed, or email comments must be received on or before September 7, 2021.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 25770 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 25770 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Sara Young or Carrie Hubard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The purpose of this research is to understand the foraging ecology, physiology, habitat use, and diving behavior of Southern Ocean pinnipeds and the factors that affect and constrain their foraging and at-sea behaviors and how these ecological and physiological factors (1) vary in space and time, (2) influence and constrain the behavior of these species, (3) are impacted by environmental change, and (4) compare with other marine mammal species. To accomplish these objectives, the applicant proposes to capture and sample Ross seals (*Ommatophoca rossii*), leopard seals (*Hydrurga leptonyx*), crabeater seals (*Lobodon carcinophaga*), southern elephant seals (*Mirounga leonina*), Weddell seals (*Leptonychotes weddellii*), and Antarctic fur seals (*Arctocephalus gazella*) throughout their range for five years. Researchers may capture, release, and recapture up to 40 adult animals per species per year at sites throughout their range to assess mass, sex, morphometrics, blood, total blood volume, hair, vibrissae, milk, muscle/blubber/skin biopsies, swabs, urine, metabolic measurements, stomach lavage/enema, and ultrasound blubber measurements. Researchers may also capture 50 pups of each species for marking, morphometrics, and sample collection, including blood, blubber, nail, hair, mucous membrane swabs, and vibrissae. An additional 1,000 each of crabeater seals, leopard seals, and Ross seals, southern elephant seals, Weddell seals, and Antarctic fur seals may be taken annually by unintentional disturbance during captures, opportunistic sample collection, aerial surveys, and resights. Unintentional mortality or serious injury of up to four animals per species annually, not to exceed ten animals per species over five years, is requested. Blood and tissue samples from sampled animals or salvaged from carcasses would be imported from the Southern Ocean and Antarctica to the United States and exported world-wide for analyses.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the

activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: August 2, 2021.

Amy Sloan,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2021–16743 Filed 8–4–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB290]

Pacific Island Fisheries; Marine Conservation Plan for American Samoa; Western Pacific Sustainable Fisheries Fund

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

ACTION: Notice of agency decision.

SUMMARY: NMFS announces approval of a marine conservation plan (MCP) for American Samoa.

DATES: This agency decision is effective from July 25, 2021, through July 24, 2024.

ADDRESSES: You may obtain a copy of the MCP, identified by NOAA–NMFS–2021–0069, from the Federal e-Rulemaking Portal, *https://www.regulations.gov/docket/NOAA-NMFS-2021-0069,* or from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8200, *http://www.wpcouncil.org.*

FOR FURTHER INFORMATION CONTACT: Kate Taylor, Sustainable Fisheries, NMFS Pacific Island Regional Office, 808–725–5182.

SUPPLEMENTARY INFORMATION: Section 204(e) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes the Secretary of State, with the concurrence of the Secretary of Commerce (Secretary) and in consultation with the Council, to negotiate and enter into a Pacific Insular Area fishery agreement (PIAFA). A PIAFA would allow foreign fishing within the U.S. Exclusive Economic Zone (EEZ) adjacent to American Samoa, Guam, or the Northern Mariana Islands. The Governor of the Pacific Insular Area to which the PIAFA applies must request the PIAFA. The Secretary of State may negotiate and enter the PIAFA after consultation with, and concurrence of, the applicable Governor.

Before entering into a PIAFA, the applicable Governor, with concurrence of the Council, must develop and submit to the Secretary a three-year MCP for review and approval. The MCP must provide details on the uses for any funds collected by the Secretary. NMFS is the designee of the Secretary for MCP review and approval. The Magnuson-Stevens Act requires payments received under a PIAFA to be deposited into the United States Treasury and then conveyed to the Treasury of the Pacific Insular Area for which funds were collected.

In the case of violations by foreign fishing vessels in the EEZ around any Pacific Insular Area, amounts received by the Secretary attributable to fines and penalties imposed under the Magnuson-Stevens Act (including sums collected from the forfeiture and disposition or sale of property seized subject to its authority) are deposited into the Treasury of the Pacific Insular Area adjacent to the EEZ in which the violation occurred, after direct costs of the enforcement action are subtracted. The Pacific Insular Area government may use funds deposited into the treasury of the Pacific Insular Area for fisheries enforcement and for implementation of an MCP.

Federal regulations at 50 CFR 665.819 authorize NMFS to specify catch limits of longline-caught bigeye tuna for U.S. territories. NMFS may also authorize each territory to allocate a portion of that limit to U.S. longline fishing vessels that are permitted to fish under the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (FEP). Payments collected under specified fishing agreements are deposited into the Western Pacific Sustainable Fisheries Fund. Any funds attributable to a particular fund, and any funds attributable to a particular territory, may be used only for implementation of that territory's MCP.

An MCP must be consistent with the Council's FEPs, must identify conservation and management objectives (including criteria for determining when such objectives are met), and must prioritize planned marine conservation projects. At its June 2021 meeting, the Council reviewed and concurred with the American Samoa MCP. On July 21, 2021, the Governor of American Samoa submitted the MCP to NMFS for review and approval. The following briefly describes the objectives of the MCP. Please refer to the MCP for planned projects and activities designed to meet each objective, the evaluative criteria, and priority ranking. The MCP contains six conservation and management objectives, listed below.

1. Maximize social and economic benefits through sustainable fisheries;

2. Support quality scientific research to assess and manage fisheries;

3. Promote an ecosystem approach in fisheries management;

4. Recognize the importance of island culture and traditional fishing in managing fishery resources and foster opportunities for participation;

5. Promote education and outreach activities and regional collaboration regarding fisheries conservation;

6. Encourage development of technologies and methods to achieve the most effective level of enforcement and to ensure safety at sea.

This notice announces that NMFS has reviewed the MCP, and has determined that it satisfies the requirements of the Magnuson-Stevens Act. Accordingly, NMFS has approved the MCP for the 3-year period from July 25, 2021, through July 24, 2024. This MCP supersedes the MCP previously approved for the period July 25, 2018, through July 24, 2021 (83 FR 42490, August 22, 2018).

Dated: July 29, 2021.

Jennifer M. Wallace,

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

[FR Doc. 2021–16667 Filed 8–4–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Science Advisory Board Meeting

AGENCY: 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 Science Advisory Board (SAB). The members will discuss issues outlined in the section on Matters to be considered.

DATES: The meeting is scheduled for August 25, 2021 from 12:30 p.m. to 3:30 p.m. Eastern Daylight Time (EDT). These times and the agenda topics described below are subject to change. For the latest agenda please refer to the SAB website: *http://sab.noaa.gov/SABMeetings.aspx.*

ADDRESSES: This is a virtual meeting. The webinar registration links for the August 25, 2021 meeting may be found on the website at *http://sab.noaa.gov/SABMeetings.aspx.*

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Executive Director, SSMC3, Room 11230, 1315 East-West Hwy., Silver Spring, MD 20910; Phone Number: 301–734–1156; *Email: Cynthia.Decker@noaa.gov;* or visit the SAB website at *http://sab.noaa.gov/SABMeetings.aspx.*

SUPPLEMENTARY INFORMATION: The NOAA Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on strategies for research, education, and application of science to operations and information services. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

Status: The August 25, 2021 meeting will be open to public participation with a 5-minute public comment period at 3:20PM EDT. The SAB expects that public statements presented 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 a total time of three minutes. Written comments for the August 25, 2021 meeting should be received by the SAB Executive Director's Office by August 18, 2021 to provide sufficient time for SAB review. Written comments received by the SAB Executive Director after these dates will be distributed to the SAB, but may not be reviewed prior to the meeting date.

Special Accommodations: This meeting is physically accessible to people with disabilities. Requests for special accommodations may be directed to the Executive Director no later than 12 p.m. on August 18, 2021 for the August 25, 2021 meeting.

Matters to be Considered: The meeting on August 25, 2021 will consider (1) Climate Working Group Review of the NOAA Climate and Fisheries Implementation Approach; (2) SAB Climate Working Group Review of the NOAA Coastal Inundation at Climate Timescales white paper; (3) Priorities for Weather Research Draft Report; (4) Tsunami Science and Technology Advisory Panel Draft Report. The full agenda will be published on the SAB website. Meeting materials, including work products, will also be available on the SAB website: *http://sab.noaa.gov/SABMeetings.aspx.*

Dated: July 19, 2021.

Eric Locklear,

Acting Chief Financial Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2021–16735 Filed 8–4–21; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2021–HQ–0018]

Proposed Collection; Comment Request

AGENCY: Department of the Army, Department of Defense (DoD).

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Provost Marshal General announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by October 4, 2021.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name, docket number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Department of the Army, Office of the Provost Marshal General, Law Enforcement Division, ATTN: John M. Matthews, 2800 Army, Pentagon, DC 20301–2800 or call the Law Enforcement Division, at 703–614–6461.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Army Sex Offender Information; Department of the Army Form 190–45–SG (Army Law Enforcement Reporting and Tracking System (ALERTS)); OMB Control Number 0702–0128.

Needs and Uses: The information collection requirement is necessary to obtain and record the sex offender registration information of those sex offenders who live, work or go to school on Army installations. Respondents are any convicted sex offender required to register pursuant to any DoD, Army, State government, law, regulation, or policy where they are employed, reside, or are a student and live, work, or go to school on an Army installation. The information collected is used by Army law enforcement to ensure the sex offender is compliant with any court order restrictions.

Affected Public: Business or other for profit; Not-for-profit institutions and Individuals and Households.

Annual Burden Hours: 40.

Number of Respondents: 120.

Responses per Respondent: 1.

Annual Responses: 120.

Average Burden per Response: 20 minutes.

Frequency: On occasion.

Respondents are sex offenders required to register with the state and live, work or go to school on an Army Installation. The information collected is used by Army law enforcement and the garrison commander to ensure the sex offender is compliant with any specific court ordered restrictions on Army installations. Data from members

of the public is collected only by Army law enforcement authorized personnel. The frequency of sex offender registration with the Provost Marshal Office (PMO) is not under the control of any Army law enforcement personnel, it is the responsibility of the sex offender who lives or works on the Army installations to follow Army policy and report to the PMO within 3 working days of assignment to the installation. Sex offenders could live or work on an Army installation and live in government housing near schools or daycare without Army law enforcement's knowledge. Army law enforcement would be less able to complete its mission to provide security and law enforcement to safeguard personnel living and working on Army installations.

Dated: July 28, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–16748 Filed 8–4–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 21–28]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Neil Hedlund at *neil.g.hedlund.civ@mail.mil* or (703) 697–9214.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 21–28 with attached Policy Justification.

Dated: July 28, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

March 16, 2021

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 21-28 concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of the Netherlands for defense articles and services estimated to cost $125 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Heidi H. Grant
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 21–28

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of the Netherlands

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	$ 0 million
Other	$125 million
TOTAL	$125 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Foreign Military Sales Case NE–B–WJO, implemented on December 28, 2016, was below congressional notification threshold at $59.8 million for the Royal Netherlands Air Force CH–47 pilot training program and logistics support at Fort Hood, Texas. The Netherlands has requested the case be amended to include additional support, which will push the current case above the notification threshold and thus requires notification of the entire case.

Major Defense Equipment (MDE):

None

Non-MDE:

Support for the Royal Netherlands Air Force CH–47 training program, to include fuel; base operating support; facilities; publications and technical documentation; pilot training; personnel training and training equipment; weapon system and software support; U.S. Government and contractor technical, engineering, and logistics

personnel services; and other related elements of logistical and program support.

(iv) *Military Department:* Army (NE–B–WJO)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* March 16, 2021

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

The Netherlands—CH–47 Pilot Training and Logistics Support

The Government of the Netherlands has requested support for the Royal Netherlands Air Force CH–47 training program, to include fuel; base operating support; facilities; publications and technical documentation; pilot training; personnel training and training equipment; weapon system and software support; U.S. Government and contractor technical, engineering, and logistics personnel services; and other related elements of logistical and program support. The total overall estimated value is $125 million.

This proposed sale will support the foreign policy and national security of the United States by helping to improve the security of a NATO ally which is an important force for the political stability and economic progress in Europe.

The proposed sale will improve the Netherlands' capability to maintain a set of highly trained and deployment-ready Royal Netherlands Air Force Chinook units via continued training activities at Fort Hood, Texas. This training includes the AMERICAN FALCON exercise, which serves as a certifying event for Dutch military units and personnel to deploy abroad, often supporting U.S.-led coalition operations. The Netherlands will have no difficulty absorbing this training and support into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

This proposed sale does not contain any principal contractor. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to the Netherlands.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2021–16768 Filed 8–4–21; 8:45 am]

BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2021–OS–0026]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by September 7, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Workplace and Gender Relations Survey- Civilian; OMB Control Number 0704–WGRC.

Type of Request: Regular.

Number of Respondents: 79,289.

Responses per Respondent: 1.

Annual Responses: 79,289.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 39,645 hours.

Needs and Uses: The WGRC fulfills the Congressional mandate outlined in Title 10 U.S.C. 481a for a biennial survey assessment of gender relations in the DoD civilian workplace. The mandate requires that the survey (1) provides indicators of positive and negative trends for professional and personal relationships between male and female employees; (2) estimates the prevalence of unwanted gender-related behaviors for DoD civilian employees within the preceding fiscal year; (3) examines the effectiveness of policies designed to improve professional relationships between male and female employees; and (4) examines the effectiveness of current processes for complaints and investigations concerning unwanted gender-related behaviors, including sexual assault, sexual harassment, and gender discrimination. The legal requirements for the WGRC can be found in the following:

- FY15 NDAA, Section 1073
- 10 U.S.C., Section 481a
- 10 U.S.C., Section 136
- 10 U.S.C., Section 2358
- Public Law (PL) 111–383, Sections 1602 and 1631; 113–291, Section 1073

These legal requirements mandate that the WGRC solicit information on gender issues, including issues relating to sexual assault, sexual harassment, and gender discrimination, as well as the climate in the Department for forming professional relationships between male and female employees. They also give the Department authority to conduct such surveys under the guidance of the USD(P&R).

Overall, the results of the survey will assess progress, identify shortfalls, and revise policies and programs as needed related to issues directly affecting DoD civilian employees. Data from this survey will be presented to the Office of the Under Secretary of Defense for Personnel and Readiness (OUSD[P&R]), Congress, and DoD policy and program offices to assess and improve policies, programs, practices, and training related to gender relations in the DoD informed by current and statistically reliable information. Analysis will include OPA's standard products: A results and trends report (a set of relative frequency distributions of each question, and cross-tabulations of survey questions by key stratifying variables), briefing slides, reports highlighting key findings, and a statistical methodology report. Ad hoc analyses requested by the policy office sponsors and other approved organizations may be conducted as needed and based on available staff.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket

ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: July 28, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–16747 Filed 8–4–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2021–OS–0080]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Personnel and Readiness announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by October 4, 2021.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Human Resources Activity, 4800 Mark Center Drive, Suite 08F05 Alexandria, VA 22350, LaTarsha Yeargins, 571–372–2089.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Status of Forces Survey of Active Duty Members; OMB Control Number 0704–SOFA.

Needs and Uses: The Status of Forces Active Duty Survey (SOFS–A) is an annual DoD wide large-scale survey of active duty members that is used in evaluating existing policies and programs, establishing baseline measures before implementing new policies and programs, and monitoring the progress of existing policies/programs. The survey assesses topics such as financial well-being, retention intention, stress, tempo, readiness, and suicide awareness. Data are aggregated by appropriate demographics, including Service, paygrade, gender, race/ethnicity, and other indicators. In order to be able to meet reporting requirements for DoD leadership, the Military Services, and Congress, the survey needs to be completed by winter 2021. The legal requirements for the SOFS–A can be found in the FY2016 NDAA, Title VI, Subtitle F, Subpart 661. This legal requirement mandates that the SOFS–A solicit information on financial literacy and preparedness. Results will be used by the Service Secretaries to evaluate and update financial literacy training and will be submitted in a report to the Committees on Armed Services of the Senate and the House of Representatives.

Affected Public: Individuals or households.

Annual Burden Hours: 4,125 hours.

Number of Respondents: 16,500.

Responses per Respondent: 1.

Annual Responses: 16,500.

Average Burden per Response: 15 minutes.

Frequency: Annually.

Dated: July 28, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–16745 Filed 8–4–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2021–OS–0037]

Submission for OMB Review; Comment Request

AGENCY: Office of the Director of Administration and Management, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by September 7, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Title; Associated Form; and OMB Number: Pentagon Facilities Access Control System; DD 2249; OMB Control Number 0704–AAFV.

Type of Request: New Request.

Number of Respondents: 211,000.

Responses per Respondent: 1.

Annual Responses: 211,000.

Average Burden per Response: 7 minutes.

Annual Burden Hours: 24,617.

Needs and Uses: The information will be used by the Pentagon Pass Office to conduct a NCIC check of all members of the public 18 years and older that request access to the Pentagon or a Pentagon facility. The method for collecting the required information varies depending on the status of the individual making the request and the length of time that access is required.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: July 28, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–16742 Filed 8–4–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 21–29]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Neil Hedlund at *neil.g.hedlund.civ@mail.mil* or (703) 697–9214.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 21–29 with attached Policy Justification.

Dated: July 28, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

March 16, 2021

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 21-29 concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of the Netherlands for defense articles and services estimated to cost $190 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Heidi H. Grant
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 21–29

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of the Netherlands

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	$ 0 million
Other	$190 million
TOTAL	$190 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Foreign Military Sales Case NE–B–WJP, implemented on December 29, 2016, was below congressional notification threshold at $77.3 million for the Royal Netherlands Air Force AH–64 pilot training program and logistics support at Fort Hood, Texas. The Netherlands has requested the case be amended to include additional support, which will push the current case above the notification threshold and thus requires notification of the entire case.

Major Defense Equipment (MDE): None.

Non-MDE: Support for the Royal Netherlands Air Force AH–64 training program, to include fuel; base operating support; facilities; publications and technical documentation; pilot training; AH–64D to AH–64E conversion training

support; personnel training and training equipment; weapon system and software support; U.S. Government and contractor technical, engineering, and logistics personnel services; and other related elements of logistical and program support.

(iv) *Military Department:* Army (NE–B–WJP)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* March 16, 2021

*As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

The Netherlands—AH–64 Pilot Training and Logistics Support

The Government of the Netherlands has requested support for the Royal Netherlands Air Force AH–64 training program, to include fuel; base operating support; facilities; publications and technical documentation; pilot training; AH–64D to AH–64E conversion training support; personnel training and training equipment; weapon system and software support; U.S. Government and contractor technical, engineering, and logistics personnel services; and other related elements of logistical and program support. The total overall estimated value is $190 million.

This proposed sale will support the foreign policy and national security of the United States by helping to improve the security of a NATO ally which is an important force for political stability and economic progress in Europe.

The proposed sale will improve the Netherlands' capability to maintain a set of highly trained and deployment-ready Royal Netherlands Air Force Apache units via continued training activities at Fort Hood, Texas. This training includes the AMERICAN FALCON exercise, which serves as a certifying event for Dutch military units and personnel to deploy abroad, often supporting U.S.-led coalition operations. The Netherlands will have no difficulty absorbing this training and support into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

This proposed sale does not contain any principal contractor. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to the Netherlands.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2021–16769 Filed 8–4–21; 8:45 am]

BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2021–OS–0079]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Personnel and Readiness announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by October 4, 2021.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Human Resources Activity, 4800 Mark Center Drive, Suite 08F05, Alexandria, VA 22350, LaTarsha Yeargins, 571–372–2089.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Problematic Sexual Behavior in Children and Youth Information System; OMB Control Number 0704–PSBC.

Needs and Uses: This information collection provides incident and case management data on problematic sexual behavior between children and youth as required by the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232), Section 1089, Policy on Response to Juvenile on Juvenile Problematic Sexual Behavior Committed on Military Installations. This statute requires policy development, data collection, and Family Advocacy Program (FAP) involvement through a multi-disciplinary response to problematic sexual behavior in children and youth (PSB–CY) occurring on military installations. The purpose of the collection is to determine eligibility for FAP services and to initiate a case record that will inform and support the development and implementation of well-coordinated safety plans, evidence informed support and intervention services, and referrals to specialized care when needed that meet the complex needs of children, youth, and their families involved in incidents of PSB–CY.

Affected Public: Individuals or households.

Annual Burden Hours: 2,000 hours.

Number of Respondents: 2,000.

Responses per Respondent: 1.

Annual Responses: 2,000.

Average Burden per Response: 1 hour.

Frequency: On occasion.

Dated: July 28, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–16746 Filed 8–4–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Postsecondary Programs for Students with Intellectual Disabilities–National Technical Assistance and Dissemination Center Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications (NIA) for a new award for fiscal year (FY) 2021 for the Postsecondary Programs for Students with Intellectual Disabilities–National Technical Assistance and Dissemination Center (PPSID–NTAD) program, Assistance Listing Number 84.407C. This notice relates to the approved information collection under OMB control number 1894–0006.

DATES: *Applications available:* August 5, 2021.

Deadline for transmittal of applications: September 7, 2021.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

FOR FURTHER INFORMATION CONTACT: Shedita Alston, U.S. Department of Education, 400 Maryland Avenue SW, Room 2B194, Washington, DC 20202–4260. Telephone: (202) 453–7090. Email: *Shedita.Alston@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Postsecondary Programs for Students with Intellectual Disabilities-National Technical Assistance and Dissemination Center (PPSID–NTAD) program provides for the establishment of a technical assistance center to translate and disseminate research and best practices for all institutions of higher education (IHEs), including those not participating in the Transition and Postsecondary Programs for Students with Intellectual Disabilities (TPSID) program, for improving inclusive postsecondary education for students with intellectual disabilities (SWIDs). This center will help ensure that knowledge and products gained through research will reach more IHEs and students and improve postsecondary educational opportunities SWIDs.

Background: Historically in the United States, the education, employment, and independent living outcomes for individuals with intellectual disabilities have lagged that of students without disabilities. According to Migliore, Butterworth, and Hart (2009), SWIDs have the lowest rates of education, work, or preparation for work after high school of all disability groups.[1] Since 2010, through the grants that the Department has awarded under the TPSID program, we have seen improvements in services for students with disabilities, including institutions of higher education more frequently offering specially designed instruction in inclusive and integrated settings to support improved academic, functional, and social outcomes, which, in turn, lead to improved employment and independent living outcomes.

The Department is particularly interested in broadening the dissemination of information that is based on the work that has been completed by projects that were funded under the TPSID program (Assistance Listing Number 84.407A). The Department seeks to assist other IHEs in learning about high-impact practices for these students and sharing them with the widest audience possible, including other colleges and universities, local educational agencies (LEAs), families and students, and other stakeholders who may be interested in developing, expanding, or improving inclusive higher education for SWIDs. Through the dissemination of such information, including research and promising practices in the field of postsecondary education for SWIDs, the PPSID–NTAD program seeks to better support comprehensive transition and postsecondary education programs across the country (including those funded under the TPSID program) as they work to increase the number of individuals with intellectual disabilities who are academically, functionally, and socially prepared to obtain and retain competitive employment in integrated settings and to live independently as full and active members of their communities.

Priorities: This notice contains one absolute priority and one competitive preference priority. We are establishing these priorities for the FY 2021 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232 (d)(1).

Absolute Priority: For FY 2021 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This absolute priority is:

The purpose of this priority is to fund a cooperative agreement to establish and operate a National Technical Assistance Center for Postsecondary Programs for Students with Intellectual Disabilities (Center). This Center will translate and disseminate to institutions of higher education (IHEs) research and best practices for improving inclusive postsecondary education for (SWIDs).

The Center must be designed to achieve, at a minimum, the following expected outcomes:

(a) Increased accessibility to postsecondary education courses, including courses conducted in-person and through remote learning, for SWIDs.

(b) Increased participation of SWIDs in the same curriculum offered to matriculating college students without intellectual disabilities.

(c) Increased availability for SWIDs of the same campus services and events offered to matriculating students without intellectual disabilities (such as academic and career advising, on-campus residential living that is not restricted to matriculating college students, employment, and student orientation).

(d) An increased number of IHEs offering comprehensive transition programs (CTPs) for SWIDs.

(e) An increased number of SWIDs obtaining a meaningful postsecondary credential each year.

In responding to this priority, the applicant must describe—

(a) How the Center will translate and disseminate to all IHEs, including those not participating in the TPSID program and those not currently offering Comprehensive Transition Programs, research and best practices for improving inclusive postsecondary education for SWIDs;

(b) How the Center will assist IHEs, including IHEs that do not currently have CTPs, in the development, evaluation, and continuous improvement of such programs;

[1] A. Migliore, J. Butterworth, and D. Hart, Fast facts: Postsecondary education and employment outcomes for youth with intellectual disabilities (No. 1). Boston: Institute for Community Inclusion.

(c) How the Center will assist IHEs in the expansion of inclusive practices for SWIDs across a wide range of academic programs;

(d) How the Center will promote improved academic, social, independent living, and self-advocacy outcomes for SWIDs;

(e) How the Center will increase the capacity of faculty, campus service providers, and families to meet the needs of SWIDs; and

(f) How the Center will coordinate with other federally funded technical assistance centers to avoid duplication of activities.

Competitive Preference Priority: For FY 2021 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we award up to an additional six points to an application, depending on how well the application meets this priority.

This priority is:

Projects designed to develop and sustain partnerships between IHEs, businesses, LEAs, vocational rehabilitation agencies, community-based organizations, or other non-profit organizations to support improved academic, social, independent living, and self-advocacy outcomes for SWIDs.

Definitions: The following definitions apply to this competition. We are establishing the definition of ''remote learning'' in this notice for the FY 2021 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition, in accordance with section 437(d)(1) of GEPA. The definitions of ''comprehensive transition and postsecondary program for students with intellectual disabilities'' and ''student with an intellectual disability'' are from section 760 of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1140). The definition of ''institution of higher education'' is from section 101 of the HEA (20 U.S.C. 1001). The term ''cooperative agreement'' is from 2 CFR 200.24.

Comprehensive transition and postsecondary program for students with intellectual disabilities means a degree, certificate, or nondegree program that—

(1) Is offered by an IHE;

(2) Is designed to support SWIDs who are seeking to continue academic, career and technical, and independent living instruction at an IHE in order to prepare for gainful employment;

(3) Includes an advising and curriculum structure;

(4) Requires SWIDs to participate on not less than a half-time basis as determined by the institution, with such participation focusing on academic components, and occurring through one or more of the following activities:

(i) Regular enrollment in credit-bearing courses with nondisabled students offered by the institution.

(ii) Auditing or participating in courses with nondisabled students offered by the institution for which the student does not receive regular academic credit.

(iii) Enrollment in noncredit-bearing, nondegree courses with nondisabled students.

(iv) Participation in internships or work-based training in settings with nondisabled individuals; and

(5) Requires SWIDs to be socially and academically integrated with non-disabled students to the maximum extent possible.

Cooperative agreement means a legal instrument of financial assistance between a Federal awarding agency and a recipient or a pass-through entity and a subrecipient that, consistent with 31 U.S.C. 6302–6305:

(1) Is used to enter into a relationship the principal purpose of which is to transfer anything of value to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal Government or pass-through entity's direct benefit or use;

(2) Is distinguished from a grant in that it provides for substantial involvement of the Federal awarding agency in carrying out the activity contemplated by the Federal award.

(3) The term does not include:

(i) A cooperative research and development agreement as defined in 15 U.S.C. 3710a; or

(ii) An agreement that provides only:

(A) Direct United States Government cash assistance to an individual;

(B) A subsidy;

(C) A loan;

(D) A loan guarantee; or

(E) Insurance.

Institution of higher education—

(1) Means an educational institution in any State that—

(i) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, or persons who meet the requirements of section 484(d) of the HEA;

(ii) Is legally authorized within such State to provide a program of education beyond secondary education;

(iii) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree, or awards a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the Secretary;

(iv) Is a public or other nonprofit institution; and

(v) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted pre-accreditation status by such an agency or association that has been recognized by the Secretary for the granting of pre-accreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

(2) Additional institutions included for the purposes of the HEA, other than title IV. The term ''institution of higher education'' also includes—

(i) Any school that provides not less than a 1-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provision of paragraphs (i), (ii), (iv), and (v) of paragraph (1); and

(ii) A public or nonprofit private educational institution in any State that, in lieu of the requirement in paragraph (1)(i), admits as regular students individuals—

(A) Who are beyond the age of compulsory school attendance in the State in which the institution is located; or

(B) Who will be dually or concurrently enrolled in the institution and a secondary school.

Remote learning means programming where at least part of the learning occurs away from the physical building in a manner that addresses a learner's education needs. Remote learning may include online, hybrid/blended learning, or non-technology-based learning (*e.g.,* lab kits, project supplies, paper packets).

Student with an intellectual disability means a student—

(1) With a cognitive impairment, characterized by significant limitations in—

(i) Intellectual and cognitive functioning; and

(ii) Adaptive behavior as expressed in conceptual, social, and practical adaptive skills; and

(2) Who is currently, or was formerly, eligible for a free appropriate public education under the Individuals with Disabilities Education Act.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements regulations governing the first grant competition under a new or substantially revised program authority. To ensure timely grant awards, the Secretary has decided to forgo public comment on the priorities and definitions under section 437(d)(1) of GEPA. These priorities and definitions will apply to the FY 2021 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition.

Program Authority: Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriations Act, 2021, H.R. 7614, 116th Congress (2020); the explanatory statement accompanying H.R. 7614, Congressional Record, December 21, 2020, H8635.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in the Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: $1,980,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Average Size of Award: $1,980,000.

Maximum Award: We will not make an award exceeding $1,980,000 for a project period of 12 months.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* We are establishing the following eligibility requirement for the FY 2021 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition, in accordance with section 437(d) (1) of GEPA. To be eligible to apply for a grant under this competition, the applicant must be an entity, or partnership of entities, that has demonstrated expertise in the fields of—

(a) Higher education;

(b) The education of SWIDS;

(c) The development of comprehensive transition and postsecondary programs for students SWIDs; and

(d) Evaluation and technical assistance.

2. a. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

b. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

c. *Indirect Cost Rate Information:* This program uses a restricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf,* which contains requirements and information on how to submit an application.

2. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. However, under 34 CFR 79.8 (a), we waive intergovernmental review in order to make awards by September 30, 2021.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 50 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger, and no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract. However, the recommended page limit does apply to all the application narrative.

Note: The Budget Information-Non-Construction Programs Form (ED 524) Sections A–C are not the same as the narrative response to the Budget section of the selection criteria.

V. Application Review Information

1. *Selection Criteria:* The following selection criteria for this program are from 34 CFR 75.210. The points assigned to each criterion are indicated in parentheses. Applicants may earn up to a total of 100 points for the selection criteria and up to six additional points for the competitive preference priority.

(a) *Need for project.* (up to 10 points)

(1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers the following factors:

(i) The magnitude or severity of the problem to be addressed by the proposed project.

(ii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the

nature and magnitude of those gaps or weaknesses.

(b) *Significance.* (up to 10 points)

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The extent to which the results of the proposed project are to be disseminated in ways that will enable others to use the information or strategies.

(ii) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies.

(c) *Quality of the project design.* (up to 15 points)

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(ii) The extent to which the design of the proposed project includes a thorough, high-quality review of the relevant literature, a high-quality plan for project implementation, and the use of appropriate methodological tools to ensure successful achievement of project objectives.

(iii) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(d) *Quality of project services.* (up to 15 points)

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services.

(ii) The likelihood that the services to be provided by the proposed project will lead to improvements in the skills necessary to gain employment or build capacity for independent living.

(iii) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(e) *Quality of project personnel.* (up to 10 points)

(1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator.

(ii) The qualifications, including relevant training and experience, of key project personnel.

(f) *Adequacy of resources.* (up to 20 points)

(1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(ii) The extent to which the budget is adequate to support the proposed project.

(iii) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits.

(iv) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

(g) *Quality of the project evaluation.* (up to 20 points)

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the project evaluation to be conducted of the proposed project, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(iii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress towards achieving intended outcomes.

(iv) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

A panel of three non-Federal reviewers will review and score each application in accordance with the selection criteria. A rank order funding slate will be made from this review. An award will be made in rank order according to the average score received from the combined peer review and competitive preference priority point grand total.

In a tie-breaking situation under this program, if a tie remains after applying any additional points from the competitive preference priority, preference will be given to the applicant with the highest score under the ''Quality of the Project Design'' criterion. If there is still a tie after implementing the first tiebreaker, preference will be given to the applicant with the highest score under the ''Quality of the Project Services'' criterion. If there is still a tie after applying the secondary tiebreaker, preference will be given to the applicant with the highest score on the ''Quality of Management Plan'' selection criterion.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this program, the Department conducts

a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with—

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

6. Continuation Awards: In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application. In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements, please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* The Government Performance and Results Act of 1993 directs Federal departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals. To assess the success of the grantee in meeting these goals, the Secretary has established the following two performance measures for annually assessing the effectiveness of the PPSID–NTAD program:

(a) The percentage of inclusive comprehensive transition and postsecondary programs SWIDs assisted by the Center that use the technical assistance and/or best practices knowledge disseminated by the Center; and

(b) The percentage of SWIDs who are enrolled in programs assisted by the Center who complete the programs and obtain a meaningful credential, as defined by the Center and supported through empirical evidence.

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or another accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Michelle Asha Cooper,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 2021–16832 Filed 8–4–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities and Technical Assistance on State Data Collection—National Assessment Center

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for a new award for fiscal year (FY) 2021 for a National Assessment Center, Assistance Listing Number 84.326G. This notice relates to the approved information collection under OMB control number 1820–0028.

DATES:

Applications available: August 5, 2021.

Deadline for transmittal of applications: September 7, 2021.

Pre-application webinar information: No later than August 10, 2021, the Office of Special Education Programs (OSEP) will post a pre-recorded informational webinar designed to provide technical assistance (TA) to interested applicants. The webinar may be found at *www2.ed.gov/fund/grant/apply/osep/new-osep-grants.html.*

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

FOR FURTHER INFORMATION CONTACT: David Egnor, U.S. Department of Education, 400 Maryland Avenue SW, Room 5163, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–7334 or (202) 856–6409. Email: *David.Egnor@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Programs: The purpose of the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program is to promote academic achievement and to improve results for children with disabilities by providing TA, supporting model demonstration projects, disseminating useful information, and implementing activities that are supported by scientifically based research. The purpose of the Technical Assistance on State Data Collection program is to improve the capacity of States to meet the Individuals with Disabilities Education Act (IDEA) data collection and reporting requirements.

Priorities: This notice contains two absolute priorities. In accordance with 34 CFR 75.105(b)(2)(v), Absolute Priority 1 is from allowable activities specified or otherwise authorized in the IDEA (see sections 663 and 681(d) of the IDEA, 20 U.S.C. 1463 and 1481(d)). Absolute Priority 2 is from the notice of final priority (NFP) for the Technical Assistance on State Data Collection Program—Targeted and Intensive Technical Assistance to States on the Analysis and Use of Diagnostic, Interim, and Summative Assessment Data to Support Implementation of States' Identified Measurable Result(s) published elsewhere in this issue of the **Federal Register**.

Absolute Priorities: For FY 2021 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet both of these priorities.

These priorities are:

Priority 1: Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities—National Assessment Center.

Background:

Section 612(a)(16) of the IDEA requires that all students with disabilities are included in all general State and districtwide assessments, including assessments described under section 1111 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs (IEPs). In accordance with Federal law, there are several ways for students with disabilities to participate appropriately in State and districtwide assessments: General assessments (with or without accommodations), alternate assessments based on grade-level academic achievement standards, and alternate assessments based on alternate academic achievement standards for students with the most significant cognitive disabilities.

Despite the progress State educational agencies (SEAs) and local educational agencies (LEAs) have made in including students with disabilities in assessments and accountability systems, SEAs and LEAs continue to face challenges, such as (1) integrating data from dissimilar tests (*e.g.,* general without accommodations, general with accommodations, alternate) into a single accountability system; (2) developing consistent SEA and LEA policies on assessment accommodations that provide maximum accessibility while maintaining test reliability and validity; (3) analyzing and using diagnostic, interim,[1] and summative assessment data to improve instruction, learning,

[1] For the purposes of this priority, the term ''interim assessments'' refer to assessments that are administered several times during a school year to measure progress. Another term that is sometimes used to describe these assessments is ''formative assessments.''

and accountability for students with disabilities; and (4) addressing test security, accessibility, technical support, and other challenges associated with transitioning from traditional paper-and-pencil assessments to digitally-based assessments (DBAs), including DBAs that can be administered via distance education and other remote service delivery models of instruction.

Furthermore, one of the most complex challenges faced by SEAs and LEAs is developing and administering English language proficiency (ELP) assessments to students with disabilities who are English learners (ELs). Properly identifying these students as disabled is also a significant challenge if their disabilities are masked by their limited English proficiency, or vice versa. Improper identification may lead to inappropriate instruction, assessments, and accommodations for these students. Linguistic and cultural biases may also affect the validity of assessments for ELs with disabilities.

Finally, the Department notes that in many schools, there may be unnecessary testing or unclear purpose applied to the task of assessing students, including students with disabilities, that consumes too much instructional time and creates undue stress for educators and students. (For more information, see the Department's February 2, 2016, letter to Chief State School Officers available at *www2.ed.gov/admins/lead/account/saa/16-0002signedcsso222016ltr.pdf.*)

These and other complex challenges will continue to arise as States continue to implement, revise, or adopt new challenging academic content standards and develop new, valid, more instructionally useful, and inclusive assessments aligned to these standards. Developing these new assessments has been and will continue to be challenging and time-consuming, and States and LEAs need support in identifying and implementing effective practices for identifying and including children with disabilities in State and districtwide assessments. Moreover, methods for analyzing and effectively using State and districtwide assessment data to improve instruction, learning, and accountability for students with disabilities will continue to need further development, refinement, and technical support.

Priority:

The purpose of this priority is to fund a cooperative agreement to support the establishment and operation of a National Assessment Center (Center) to address national, State, and local assessment issues related to students with disabilities. The Center must achieve, at a minimum, the following expected outcomes to ensure the inclusion of students with disabilities in State and districtwide assessments and accountability systems:

Knowledge Development Outcomes.

(a) Increased body of knowledge on practices supported by evidence to collect, analyze, synthesize, and disseminate relevant information regarding State and districtwide assessments of students with disabilities, including on topics such as—

(1) The inclusion of students with disabilities in accountability systems;

(2) Assessment accommodations;

(3) Alternate assessments;

(4) Universal design of assessments;

(5) Technology-based assessments, including DBAs;

(6) Interim assessments;

(7) Competency-based assessments;

(8) Performance-based assessments;

(9) The analysis and reporting of assessment data (including methods for addressing assessment data interoperability challenges);

(10) Application of growth models in assessment programs;

(11) Uses of diagnostic, interim, and summative assessment data to inform instructional programs for students with disabilities; and

(12) Identifying and assessing ELs with disabilities, including ensuring that all ELs with disabilities receive appropriate accommodations, as needed, on ELP assessments, and that the results of ELP assessments for students with disabilities are validly used in making accountability determinations under the ESEA.

(b) Increased capacity of SEA and LEA personnel to assess SEA and LEA needs, and track SEA and LEA activities and trends, related to including students with disabilities in State and districtwide assessments, including, as appropriate, improving the knowledge and skills of SEA and LEA personnel related to any of the topics listed in paragraph (a) of the *Knowledge Development Outcomes* section of the priority.

(c) Increased capacity of parents of students with disabilities to understand the statutory and regulatory bases for including all students with disabilities in State and districtwide assessments, including general assessments with and without accommodations, alternate assessments based on grade-level academic achievement standards, and alternate assessments based on alternate academic achievement standards for students with the most significant cognitive disabilities.

Technical Assistance and Dissemination Outcomes.

(a) Increased capacity of SEA and LEA personnel to collect and analyze diagnostic, interim, and summative assessment data on the performance of students with disabilities, including ELs with disabilities.

(b) Increased capacity of SEA and LEA personnel to use diagnostic, interim, and summative assessment data to develop, evaluate, and improve educational policies and increase accountability for students with disabilities, including ELs with disabilities.

(c) Increased capacity of LEA personnel to use diagnostic, interim, and summative assessment results in instructional decision-making to improve teaching and learning for students with disabilities, including ELs with disabilities.

(d) Increased capacity of parents of students with disabilities to understand how students with disabilities are included in, and benefit from, participation in State and districtwide assessments, including general assessments with and without accommodations, alternate assessments based on grade-level academic achievement standards, alternate assessments based on alternate academic achievement standards for students with the most significant cognitive disabilities, and other assessments listed in paragraphs (a)(5)–(8) of the *Knowledge Development Outcomes* section of the priority.

(e) Increased awareness of national policymakers regarding how students with disabilities are included in and benefit from current and emerging approaches to State and districtwide assessment, including topics listed in paragraph (a) of the *Knowledge Development Outcomes* section of this priority.

In addition to these programmatic requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements under *Priority 2.*

Priority 2: Targeted and Intensive Technical Assistance to States on the Analysis and Use of Diagnostic, Interim, and Summative Assessment Data to Support Implementation of States' Identified Measurable Results.

Background:

The purpose of this priority is to (1) assist those States that have a State-Identified Measurable Result (SIMR) related to assessment in analyzing and using diagnostic, interim, and summative assessment data to better achieve the SIMR as described in their

IDEA Part B State-Systemic Improvement Plans (SSIPs); and (2) assist State efforts to provide TA to LEAs in the analyzing and using State and districtwide assessment data for those States that have a SIMR related to assessment, to better achieve the SIMR, as appropriate.

As detailed in the background section for Priority 1, research indicates that SEAs and LEAs continue to face challenges in analyzing and using diagnostic, interim, and summative assessment data to improve instruction, learning, and accountability for students with disabilities. SEAs also need assistance analyzing State assessment data submitted as part of the SSIP and the SIMR in accordance with section 616 of IDEA and the Office of Special Education Programs (OSEP) guidance. Beginning in the IDEA Part B Federal fiscal year (FFY) 2013 State Performance Plan/Annual Performance Report (SPP/APR), States were required to provide, as part of Phase I of the SSIP, a statement of the result(s) the State intends to achieve through implementation of the SSIP, which is referred to as the SIMR for Children with Disabilities. States were required to establish ''measurable and rigorous'' targets for their SIMRs for each successive year of the SPP (FFYs 2014 through 2019) and will be required to do so for each year of the next SPP (FFYs 2020 through 2025) as part of their SPP/APR submissions. At least 36 States have focused their SIMRs on improving academic achievement as measured by assessment results for children with disabilities. These States will need assistance in analyzing and using State and districtwide assessment data to promote academic achievement and to improve results for children with disabilities.

Priority:

The purpose of this priority is to (1) assist those States that have a SIMR related to assessment in analyzing and using diagnostic, interim, and summative assessment data to better achieve the SIMR as described in their IDEA Part B SSIPs; and (2) assist State efforts to provide TA to LEAs in analyzing and using State and districtwide assessment data, for those States that have a SIMR related to assessment, to better achieve the SIMR, as appropriate.

The Center must achieve, at a minimum, the following expected outcomes:

(a) Increased capacity of SEA personnel in States that have a SIMR related to assessment results to analyze and use diagnostic, interim, and summative assessment data to better achieve the SIMR as described in the IDEA Part B SSIP, including using diagnostic, interim, and summative assessment data to evaluate and improve educational policy, inform instructional programs, and improve instruction for students with disabilities;

(b) Increased capacity of SEA personnel to provide TA to LEAs to analyze and use diagnostic, interim, and summative assessment data to improve instruction of students with disabilities and support the implementation of the SIMR; and

(c) Increased capacity of parents of students with disabilities to understand how students with disabilities are included in, and benefit from, participation in diagnostic, interim and summative assessments to improve instruction of students with disabilities and support implementation of the SIMR.

In addition to the programmatic requirements contained in both priorities, to be considered for funding applicants must meet the following application and administrative requirements,[2] which are:

(a) Demonstrate, in the narrative section of the application under ''Significance,'' how the proposed project will—

(1) Address the needs of SEAs and LEAs to analyze and use diagnostic, interim, and summative assessment data in instructional decision-making to improve teaching and learning for students with disabilities. To meet this requirement the applicant must—

(i) Present applicable national, State, and local data demonstrating the needs of SEAs and LEAs to analyze and use diagnostic, interim, and summative assessment data in instructional decision-making to improve teaching and learning for students with disabilities;

(ii) Demonstrate knowledge of current educational issues and policy initiatives related to analyzing and using diagnostic, interim, and summative assessment data in instructional decision-making to improve teaching and learning for students with disabilities; and

(iii) Describe the current level of implementation related to analyzing and using diagnostic, interim, and summative assessment data in instructional decision-making to improve teaching and learning for students with disabilities; and

(2) Improve the analysis and use of diagnostic, interim, and summative assessment data to improve teaching and learning for students with disabilities.

(b) Demonstrate, in the narrative section of the application under ''Quality of project services,'' how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will—

(i) Identify the needs of the intended recipients for TA and information; and

(ii) Ensure that products and services meet the needs of the intended recipients (*e.g.,* by creating materials in formats and languages accessible to the stakeholders served by the intended recipients);

(2) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) In Appendix A, the logic model [3] by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

(3) Use a conceptual framework (and provide a copy in Appendix A) to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

Note: The following websites provide more information on logic models and conceptual frameworks: *www.osepideasthatwork.org/logicModel* and *www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework.*

(4) Be based on current research and make use of evidence-based [4] practices (EBPs). To meet this requirement, the applicant must describe—

(i) The current research on the effectiveness of analyzing and using

[2] Paragraph (b)(5)(ii) applies only to Priority 1. Paragraph (b)(5)(iv) applies only to Priority 2.

[3] Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

[4] For the purposes of this priority, ''evidence-based'' means, at a minimum, evidence that demonstrates a rationale (as defined in 34 CFR 77.1), where a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

diagnostic, interim, and summative assessment data in instructional decision-making to improve teaching and learning for students with disabilities; and

(ii) How the proposed project will incorporate current EBPs in the development and delivery of its products and services;

(5) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) How it proposes to identify or develop the knowledge base on analyzing and using diagnostic, interim, and summative assessment data in instructional decision-making to improve teaching and learning for students with disabilities;

(ii) Its proposed approach to universal, general TA,[5] which must identify the intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(iii) Its proposed approach to targeted, specialized TA,[6] which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach; and

(B) Its proposed approach to measure the readiness of potential TA recipients to work with the project, assessing, at a minimum, their current infrastructure, available resources, and ability to build capacity at the local level; and

(iv) Its proposed approach to intensive, sustained TA,[7] which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(B) Its proposed approach to measure the readiness of SEA and LEA personnel to work with the project, including their commitment to the initiative, alignment of the initiative to their needs, current infrastructure, available resources, and ability to build capacity at the SEA and LEA levels;

(C) Its proposed plan for assisting SEAs (and LEAs, in conjunction with SEAs) to build or enhance training systems that include professional development based on adult learning principles and coaching;

(D) Its proposed plan for working with appropriate levels of the education system (*e.g.,* SEAs, regional TA providers, LEAs, schools, and families) to ensure that there is communication between each level and that there are systems in place to support the collection, analysis, and use of diagnostic, interim, and summative assessment data in instructional decision-making to improve teaching and learning for students with disabilities; and

(E) Its proposed plan for collaborating and coordinating with Department-funded TA investments, where appropriate, in order to align complementary work and jointly develop and implement products and services to meet the purposes of the priorities;

(6) Develop products and implement services that maximize efficiency. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes;

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration; and

(iii) How the proposed project will use non-project resources to achieve the intended project outcomes; and

(7) Develop a dissemination plan that describes how the applicant will systematically distribute information, products, and services to varied intended audiences, using a variety of dissemination strategies, to promote awareness and use of the Center's products and services.

(c) In the narrative section of the application under ''Quality of the project evaluation,'' include an evaluation plan for the project developed in consultation with and implemented by a third-party evaluator.[8] The evaluation plan must—

(1) Articulate formative and summative evaluation questions, including important process and outcome evaluation questions. These questions should be related to the project's proposed logic model required in paragraph (b)(2)(ii) of these requirements;

(2) Describe how progress in and fidelity of implementation, as well as project outcomes, will be measured to answer the evaluation questions. Specify the measures and associated instruments or sources for data appropriate to the evaluation questions. Include information regarding reliability and validity of measures where appropriate;

(3) Describe strategies for analyzing data and how data collected as part of this plan will be used to inform and improve service delivery over the course of the project and to refine the proposed logic model and evaluation plan, including subsequent data collection;

(4) Provide a timeline for conducting the evaluation, and include staff assignments for completing the plan. The timeline must indicate that the data will be available annually for the annual performance report (APR) and at the end of Year 2 for the review process described under the heading, *Fourth and Fifth Years of the Project;* and

(5) Dedicate sufficient funds in each budget year to cover the costs of developing or refining the evaluation plan in consultation with a ''third-party'' evaluator, as well as the costs associated with the implementation of the evaluation plan by the third-party evaluator.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of resources and quality of project personnel,'' how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications

[5] ''Universal, general TA'' means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center's website by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

[6] ''Targeted, specialized TA'' means TA service based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

[7] ''Intensive, sustained TA'' means TA services often provided on-site and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. ''TA services'' are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

[8] A ''third-party'' evaluator is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except for the evaluation activities, nor have any financial interest in the outcome of the evaluation.

and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits.

(e) Demonstrate, in the narrative section of the application under ''Quality of the management plan,'' how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policy makers, among others, in its development and operation.

(f) Address the following application requirements. The applicant must—

(1) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative; [9]

(2) Include, in the budget, attendance at the following:

(i) A one and one-half day kick-off meeting in Washington, DC, or virtually, after receipt of the award, and an annual planning meeting in Washington, DC, or virtually, with the OSEP project officer and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(ii) A two and one-half day project directors' conference in Washington, DC, or virtually, during each year of the project period;

(iii) Two annual two-day trips, or virtually, to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP; and

(iv) A one-day intensive 3+2 review meeting in Washington, DC, or virtually, during the second year of the project period;

(3) Include, in the budget, a line item for an annual set-aside of five percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with, and approved by, the OSEP project officer. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period;

(4) Maintain a high-quality website, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility;

(5) Ensure that annual project progress toward meeting project goals is posted on the project website; and

(6) Include, in Appendix A, two assurances. The first assurance is to assist OSEP with the transfer of pertinent resources and products and to maintain the continuity of services to States during the transition to a new award at the end of this award period, as appropriate. The second assurance is to ensure the applicant will track and report IDEA section 663 funds separately from IDEA section 611(i) funds. Please refer to Part II Award Information of this notice for more information about preparing the budget.

Fourth and Fifth Years of the Project:

In deciding whether to continue funding the project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), including—

(a) The recommendations of a 3+2 review team consisting of experts who have experience and knowledge in providing technical assistance to SEA and LEA personnel in including students with disabilities in assessments and accountability systems. This review will be conducted during a one-day intensive meeting that will be held during the last half of the second year of the project period;

(b) The timeliness with which, and how well, the requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The quality, relevance, and usefulness of the project's products and services and the extent to which the project's products and services are aligned with the project's objectives and likely to result in the project achieving its intended outcomes.

Under 34 CFR 75.253, the Secretary may reduce continuation awards or discontinue awards in any year of the project period for excessive carryover balances or a failure to make substantial progress. The Department intends to closely monitor unobligated balances and substantial progress under this program and may reduce or discontinue funding accordingly.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to Absolute Priority 1 in this notice.

Program Authority: For Absolute Priority 1, 20 U.S.C. 1463 and 1481; for Absolute Priority 2, 20 U.S.C. 1411(c) and 1416(i).

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The NFP.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: $1,750,000.

Estimated Available Funds under IDEA section 663: $1,000,000.

[9] OSEP has found that a minimum of a three-quarter time equivalency (0.75 FTE) in the role of project director (or divided between a half-time equivalency in the role of the project director and a quarter-time equivalency in the role of a co-project director) is necessary to ensure effective implementation of the management plan and that products and services provided are of high quality, relevant, and useful to recipients.

Estimated Available Funds under IDEA section 616(i): $750,000.

Note: Applicants must submit a separate ED 524 form with a budget and budget narrative for Absolute Priority 1 only and a separate ED 524 form with a budget and budget narrative for Absolute Priority 2 only. The Secretary will reject any application that does not address all the elements of Absolute Priority 1 separately from the elements of Absolute Priority 2 and that does not include a separate budget and budget narrative for Absolute Priority 1, separate and distinct from a budget and budget narrative for Absolute Priority 2.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2022 from the list of unfunded applicants from this competition.

Maximum Award: We will reject and not review any application that proposes a budget for Absolute Priority 1 that exceeds $1,000,000 or Absolute Priority 2 that exceeds $750,000 for a single budget period of 12 months, and we will reject and not review any application that proposes a total budget that exceeds $1,750,000 for a single budget period of 12 months. The Department may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs, including public charter schools that are considered LEAs under State law; IHEs; other public agencies; private nonprofit organizations; outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations.

2. a. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

b. *Indirect Cost Rate Information:* This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

c. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to the Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application. Under 34 CFR 75.708(e), a grantee may contract for supplies, equipment, and other services in accordance with 2 CFR part 200.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf,* which contain requirements and information on how to submit an application.

2. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition. However, under 34 CFR 79.8(a), we waive intergovernmental review in order to make an award by the end of FY 2021.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 70 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, reference citations, and captions, as well as all text in charts, tables, figures, graphs, and screen shots.
- Use a font that is 12 point or larger.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the abstract (follow the guidance provided in the application package for completing the abstract), the table of contents, the list of priority requirements, the resumes, the reference list, the letters of support, or the appendices. However, the recommended page limit does apply to all of the application narrative, including all text in charts, tables, figures, graphs, and screen shots.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are as follows:

(a) *Significance (10 points).*

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses; and

(ii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project.

(b) *Quality of project services (35 points).*

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable;

(ii) The extent to which there is a conceptual framework underlying the proposed research or demonstration activities and the quality of that framework;

(iii) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice;

(iv) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services; and

(v) The extent to which the TA services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources.

(c) *Quality of the project evaluation (20 points).*

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project;

(ii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies;

(iii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes; and

(iv) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(d) *Adequacy of resources and quality of project personnel (15 points).*

(1) The Secretary considers the adequacy of resources for the proposed project and the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator;

(ii) The qualifications, including relevant training and experience, of key project personnel;

(iii) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization;

(iv) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(e) *Quality of the management plan (20 points).*

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks;

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project;

(iii) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project; and

(iv) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications.

4. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions, and under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

5. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

6. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with—

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in

alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* For the purposes of the Government Performance and Results Act of 1993 (GPRA) and reporting under 34 CFR 75.110, we have established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program. These measures are:

- *Program Performance Measure 1:* The percentage of technical assistance and dissemination products and services deemed to be of high quality by an independent review panel of experts qualified to review the substantive content of the products and services.
- *Program Performance Measure 2:* The percentage of special education technical assistance and dissemination products and services deemed by an independent review panel of qualified experts to be of high relevance to educational and early intervention policy or practice.
- *Program Performance Measure 3:* The percentage of all special education technical assistance and dissemination products and services deemed by an independent review panel of qualified experts to be useful in improving educational or early intervention policy or practice.
- *Program Performance Measure 4:* The cost efficiency of the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program includes the percentage of milestones achieved in the current annual performance report period and the percentage of funds spent during the current fiscal year.
- *Long-term Program Performance Measure:* The percentage of States receiving special education technical assistance and dissemination services regarding scientifically or evidence-based practices for infants, toddlers, children, and youth with disabilities that successfully promote the implementation of those practices in school districts and service agencies.

Note: These measures apply only to activities funded under the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program (*i.e.,* Absolute Priority 1), and grantees are required to submit data on these measures as directed by OSEP.

Grantees will be required to report information on their project's performance in annual and final performance reports to the Department (34 CFR 75.590).

The Department will also closely monitor the extent to which the products and services provided by the Center meet needs identified by stakeholders and may require the Center to report on such alignment in their annual and final performance reports.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official

edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Katherine Neas,

Acting Assistant Secretary for the Office of Special Education and Rehabilitative Services.

[FR Doc. 2021–16855 Filed 8–3–21; 4:15 pm]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meetings

AGENCY: U.S. Election Assistance Commission.

ACTION: Sunshine Act Notice; Notice of Public Roundtable Agenda.

SUMMARY: 2020 EAVS and 2020 Elections Lessons Learned Roundtable.

DATES: Tuesday, August 17, 2021, 1:00 p.m.–3:00 p.m. Eastern.

ADDRESSES: Virtual via Zoom.

The roundtable is open to the public and will be livestreamed on the U.S. Election Assistance Commission YouTube Channel: *https://www.youtube.com/channel/UCpN6i0g2rlF4ITWhwvBwwZw.*

FOR FURTHER INFORMATION CONTACT: Kristen Muthig, Telephone: (202) 897–9285, Email: *kmuthig@eac.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: In accordance with the Government in the Sunshine Act (Sunshine Act), Public Law 94–409, as amended (5 U.S.C. 552b), the U.S. Election Assistance Commission (EAC) will conduct a virtual roundtable discussion on the new Election Administration and Voting Survey (EAVS) 2020 Comprehensive Report and ''Lessons Learned from the 2020 General Election'' report commissioned by the EAC.

Agenda: The U.S. Election Assistance Commission (EAC) Commissioners will lead the discussion with two panels of speakers. The first panel will provide an overview of the 2020 EAVS and Policy Survey and the data outcomes. The second panel will include the authors of EAC commissioned ''Lessons Learned from the 2020 General Election'' report.

Previous EAVS reports are available on the EAC's studies and report web page: *https://www.eac.gov/research-and-data/studies-and-reports.* The 2020 EAVS will be available on that web page once it is finalized. The ''Lessons Learned from the 2020 General Election'' report will also be available on the EAC's website: *https://www.eac.gov.*

The full agenda will be posted in advance on the EAC website: *https://www.eac.gov.*

Background

Since 2004, the U.S. Election Assistance Commission (EAC) has conducted the Election Administration and Voting Survey (EAVS) following each federal general election. The EAVS asks all 50 U.S. states, the District of Columbia, and five U.S. territories—American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands—to provide data about the ways Americans vote and how elections are administered. Since 2008, this project has included a separate survey collecting information about state election laws, policies, and practices.

The EAVS provides the most comprehensive source of state and local jurisdiction-level data about election administration in the United States. Topics covered through EAVS data collection relate to voter registration and list maintenance, voting practices for overseas citizens and members of the armed forces serving away from home and other important issues related to voting and election administration.

The EAC commissioned Charles Stewart from MIT and John Fortier from the American Enterprise Institute to develop the ''Lessons Learned from the 2020 General Election'' report. This report draws on a wide variety of evidence and statistical sources to review a variety of topics that inform our understanding of how well the election was run: Shifting from in-person to mail balloting; managing mail and in-person voting; counting votes; paying for the election; voting technology; voter registration; and voter confidence.

Status

This roundtable discussion will be open to the public.

Amanda Joiner,

Associate Counsel, U.S. Election Assistance Commission.

[FR Doc. 2021–16874 Filed 8–3–21; 4:15 pm]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–476–000]

West Texas Gas, Inc.; West Texas Gas Utility, LLC; Notice of Applications and Establishing Intervention Deadline

Take notice that on July 20, 2021, West Texas Gas, Inc. (WTGI) and West Texas Gas Utility, LLC (WTGU–LLC), both located at 211 North Colorado, Midland, TX 79701, filed an application under sections 7(b) and 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations requesting authorization for: (1) WTGI to abandon approximately 152 miles of 12, 10, 6, and 4-inch diameter pipeline located in Texas and New Mexico; (2) WTGI to abandon the blanket certificate it was issued pursuant to Part 157, Subpart F of the Commission's regulations; (3) WTGU–LLC to acquire, own, and operate the existing pipeline facilities that are to be abandoned by WTGI; and (4) WTGU–LLC a blanket certificate pursuant to Part 157, Subpart F of the Commission's regulations. The applicants state that the requested authorizations are designed to facilitate an internal reorganization that will have no effect on existing customers, landowners, or the environment, and is otherwise required by the public convenience and necessity, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued

by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding WTGI and WTGU–LLC's application may be directed to Justin Clark, General Counsel, West Texas Gas, Inc., 211 North Colorado, Midland, TX 79701, by telephone at (432) 682–6311 or by email at *JClark@westtexasgas.com.*

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: Complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

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 20, 2021. How to file comments and motions to intervene is explained below.

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 20, 2021. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[2] has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [3] and the regulations under the NGA [4] by the intervention deadline for the project, which is August 20, 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.

How To File Comments and Interventions

There are two ways to submit your comments and motions to intervene to the Commission. In all instances, please reference the Project docket number CP21–476–000 in your submission. The Commission encourages electronic filing of submissions.

(1) You may file your comments or motions to intervene electronically by using the 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 ''Comment on a Filing'' or ''Intervention''; or

(2) You can file a paper copy of your comments by mailing them to the following address below. Your written comments must reference the Project docket number (CP21–476–000).

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.

Motions to intervene must be served on the applicants either by mail or email (with a link to the document) at: West Texas Gas, Inc., 211 North Colorado, Midland, TX 79701 or *JClark@westtexasgas.com.* Any subsequent submissions by an intervenor must be served on the applicants and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed [5] motions to intervene are automatically granted by operation of Rule 214(c)(1).[6] 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.[7]

[1] 18 CFR (Code of Federal Regulations) 157.9.

[2] 18 CFR 385.102(d).

[3] 18 CFR 385.214.

[4] 18 CFR 157.10.

[5] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[6] 18 CFR 385.214(c)(1).

[7] 18 CFR 385.214(b)(3) and (d).

A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Tracking the Proceeding

Throughout the proceeding, additional information about the projects 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.*

Intervention Deadline: 5:00 p.m. Eastern Time on August 20, 2021.

Dated: July 30, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–16719 Filed 8–4–21; 8:45 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: RP21–982–000.

Applicants: Sierrita Gas Pipeline LLC.

Description: § 4(d) Rate Filing: LU and Fuel Update Filing to be effective 9/1/2021.

Filed Date: 7/29/21.

Accession Number: 20210729–5009.

Comments Due: 5 p.m. ET 8/10/21.

Docket Numbers: RP21–983–000.

Applicants: Ruby Pipeline, L.L.C.

Description: § 4(d) Rate Filing: FLU and EPC Update to be effective 9/1/2021.

Filed Date: 7/29/21.

Accession Number: 20210729–5010.

Comments Due: 5 p.m. ET 8/10/21.

Docket Numbers: RP21–984–000.

Applicants: Equitrans, L.P.

Description: § 4(d) Rate Filing: Negotiated Rate Service Agreements—Peoples Primary Point Changes to be effective 8/1/2021.

Filed Date: 7/29/21.

Accession Number: 20210729–5011.

Comments Due: 5 p.m. ET 8/10/21.

Docket Numbers: RP21–985–000.

Applicants: Equitrans, L.P.

Description: § 4(d) Rate Filing: Negotiated Rate Service Agreement—DTE Energy Trading—8/1/2021 to be effective 8/1/2021.

Filed Date: 7/29/21.

Accession Number: 20210729–5012.

Comments Due: 5 p.m. ET 8/10/21.

Docket Numbers: RP21–986–000.

Applicants: Granite State Gas Transmission, Inc.

Description: § 4(d) Rate Filing: A Limited Section 4 Rate Change to be effective 9/1/2021.

Filed Date: 7/29/21.

Accession Number: 20210729–5059

Comments Due: 5 p.m. ET 8/10/21.

Docket Numbers: RP21–987–000.

Applicants: Paiute Pipeline Company.

Description: § 4(d) Rate Filing: Gas Quality Specifications to be effective 8/30/2021.

Filed Date: 7/29/21.

Accession Number: 20210729–5060.

Comments Due: 5 p.m. ET 8/10/21.

Docket Numbers: RP21–988–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: Compliance filing Eastern Gas Transmission and Storage Inc GSS and LSS Flow Thru Refund to be effective N/A.

Filed Date: 7/29/21.

Accession Number: 20210729–5070.

Comments Due: 5 p.m. ET 8/10/21.

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: July 30, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–16721 Filed 8–4–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–484–000; CP20–485–000]

ANR Pipeline Company; Lakes Transmission Limited Partnership; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Alberta Xpress and Lease Capacity Abandonment Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a draft environmental impact statement (EIS) for the Alberta Xpress and Lease Capacity Abandonment Projects, proposed by ANR Pipeline Company (ANR) and Great Lakes Gas Transmission Limited Partnership (GLGT) in Docket Nos. CP20–484–000 and CP20–485–000, respectively. ANR proposes to construct and operate one new greenfield compressor station (designated as the Turkey Creek Compressor Station) and modify a mainline valve in Evangeline Parish, Louisiana, and acquire a lease agreement between ANR and GLGT. ANR has executed binding precedent agreements with two shippers to transport up to 165,000 dekatherms per day of natural gas. GLGT proposes to abandon firm capacity by a lease agreement with ANR. No new construction is proposed as part of the Lease Capacity Abandonment Project; however, this is related to the application filed by ANR to construct and operate the Alberta Xpress Project.

The draft EIS responds to comments that were received on the Commission's December 4, 2020 environmental assessment (EA),[1] provides additional discussion of climate change impacts in the region, and discloses downstream greenhouse gas emissions for the projects. With the exception of climate change impacts, the FERC staff concludes that approval of the proposed projects, with the mitigation measures recommended in this EIS, would not result in significant environmental impacts. FERC staff continues to be unable to determine significance with regards to climate change impacts.

[1] The project's EA is available on eLibrary under accession no. 20201204–3004.

The draft EIS incorporates the above-referenced EA, which addressed the potential environmental effects of the construction and operation of the Turkey Creek Compressor Station and modifications to a mainline valve. The Turkey Creek Compressor Station would include the following facilities:

- One 15,900 horsepower gas-fired turbine compressor;
- three inlet filter separators;
- three discharge gas cooling bays;
- 36-inch-diameter suction and discharge piping;
- 16-inch-diameter cold recycle valves and piping;
- 16-inch-diameter unit control valve and bypass piping; and
- related appurtenant facilities.

The Commission mailed a copy of the *Notice of Availability of the Draft Environmental Impact Statement for the Proposed Alberta Xpress and Lease Capacity Abandonment Projects* to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the Alberta Xpress Project area. The draft EIS is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). In addition, the draft EIS may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://elibrary.ferc.gov/eLibrary/search*), select ''General Search,'' and enter the docket number in the ''Docket Number'' field (*i.e.,* CP20–484 and CP20–485). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The draft EIS is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Any person wishing to comment on the draft EIS may do so. Your comments should focus on the draft EIS's disclosure and discussion of potential environmental effects, including climate impacts due to downstream greenhouse gas emissions, and measures to avoid or lessen environmental impacts. To ensure consideration of your comments on the proposal in the final EIS, it is important that the Commission receive your comments on or before 5:00 p.m. Eastern Time on September 20, 2021.

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number(s) (CP20–484–000 and CP20–485–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR part 385.214). Motions to intervene are more fully described at *https://www.ferc.gov/ferc-online/ferc-online/how-guides.* Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Questions?

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Dated: July 30, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–16718 Filed 8–4–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ21–11–000]

Orlando Utilities Commission; Notice of Filing

Take notice that on July 29, 2021, Orlando Utilities Commission submitted its tariff filing: Revised Non-Jurisdictional Rate Sheets Open Access Transmission Tariff (Schedules 7, 8, and Attachment H) 2021, to be effective 10/1/2021.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal**

Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on August 19, 2021.

Dated: July 29, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–16600 Filed 8–4–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 618–204]

Alabama Power Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Capacity Amendment of License.

b. *Project No:* P–618–204.

c. *Date Filed:* July 2, 2021.

d. *Applicant:* Alabama Power Company (Alabama Power).

e. *Name of Project:* Jordan Dam Hydroelectric Project.

f. *Location:* The project is located on the Coosa River in Coosa, Chilton, and Elmore counties, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Alan L. Peeples, Alabama Power Company, 600 North 18th Street, P.O. Box 2641, Birmingham, AL 35291–8180, (205) 257–1401.

i. *FERC Contact:* Zeena Aljibury, (202) 502–6065, *zeena.aljibury@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance date of this notice by the Commission.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–618–204. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* Alabama Power requests approval to modify Unit 3 at the Jordan Development to address significant maintenance needs and to improve power and efficiency. The proposed scope of work for Unit 3 includes complete turbine runner replacement, wicket gate replacement, turbine, and generator bearing upgrades, generator stator rewind, and related component upgrade. Alabama Power states the upgrade is expected to increase the total installed capacity by an additional 3 megawatts but that the maximum discharge of the unit at rated conditions is not expected to increase. Alabama Power notes that project operations will not change, and refurbishment will not include any structural changes to the project facilities.

l. *Locations of the Application:* The Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. Agencies may obtain copies of the application directly from the applicant. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll free, (866) 208–3676 or TTY, (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the

application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 385.2010.

Dated: July 30, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–16732 Filed 8–4–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21–2557–000]

Aron Energy Prepay 5 LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Aron Energy Prepay 5 LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 19, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: July 30, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–16715 Filed 8–4–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21–2556–000]

South River OnSite Generation, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of South River OnSite Generation, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 19, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: July 30, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–16717 Filed 8–4–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2146–260]

Alabama Power Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Capacity Amendment of License.

b. *Project No:* P–2146–260.

c. *Date Filed:* July 2, 2021.

d. *Applicant:* Alabama Power Company (Alabama Power).

e. *Name of Project:* Coosa River Project.

f. *Location:* The project is located on the Coosa River, in Coosa, Chilton, Talladega and Shelby counties, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Alan L. Peeples, Alabama Power Company, 600 North 18th Street, P.O. Box 2641, Birmingham, AL 35291–8180, (205) 257–1401.

i. *FERC Contact:* Zeena Aljibury, (202) 502–6065, *zeena.aljibury@ferc.gov*.

j. Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance date of this notice by the Commission.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–2146–260. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency

k. *Description of Request:* Alabama Power requests approval to modify Unit 6 at the Lay Development to address significant maintenance needs and to improve power and efficiency. The proposed scope of work for Unit 6 includes complete turbine replacement, wicket gate replacement, wicket gate stem bushings installation, turbine, and generator bearing upgrades, and related component replacement. Alabama Power states the turbine replacement is not expected to result in an increase to the total rated capacity or the maximum discharge of the unit at rated conditions. Alabama Power notes that project operations will not change, and refurbishment will not include any structural changes to the project facilities.

l. *Locations of the Application:* The Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. Agencies may obtain copies of the application directly from the applicant. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll free, (866) 208–3676 or TTY, (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: July 30, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–16730 Filed 8–4–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–467–000]

Texas Gas Transmission, LLC; Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Henderson County Expansion Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document that will discuss the environmental impacts of the Henderson County Expansion Project involving construction and operation of facilities by Texas Gas Transmission, LLC (Texas Gas) in Henderson and Webster Counties,

Kentucky and Posey and Johnson Counties, Indiana. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the *NEPA Process and Environmental Document* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on August 30, 2021. Comments may be submitted in written form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission before the opening of this docket on June 25, 2021, you will need to file those comments in Docket No. CP21–467–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not subsequently grant, exercise, or oversee the exercise of that eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

Texas Gas provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the Natural Gas Questions or Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.*

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP21–467–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Additionally, the Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Summary of the Proposed Project

Texas Gas proposes to construct and operate a new lateral and meter and regulator (M&R) station, upgrade an existing M&R station, and add additional compression to and modify Texas Gas' existing Slaughters Compressor Station. The Henderson County Expansion Project would provide up to 220 million standard cubic feet of natural gas per day to Southern Indiana Gas and Electric Company d/b/a CenterPoint Energy Indiana South (CenterPoint) at its AB Brown Generating Station in Posey County, Indiana. According to Texas Gas, its project would support CenterPoint's retirement of four existing coal-fired units and implementation of new intermittent renewable resources (*i.e.,* solar and wind) by providing the reliability of intermittent natural gas service during natural fluctuations in wind and solar availability.

The Henderson County Expansion Project would consist of the following facilities:

- Henderson County Lateral—Construction of an approximately 24-mile-long, 20-inch-diameter natural gas transmission pipeline extending from a new tie-in facility in Henderson County, Kentucky to the new AB Brown M&R Station in Posey County, Indiana.
- AB Brown M&R Station and Point of Demarcation Site (Posey County, Indiana)—Construction of a delivery M&R station, receiver facility, and a

0.08-mile-long, 16-inch-diameter interconnecting pipeline terminating at the new Point of Demarcation Site which would serve as CenterPoint's tie-in for project facilities for its AB Brown Plant.

- Slaughters Compressor Station (Webster County, Kentucky)—Installation of a new 4,863-horsepower Solar Centaur 50 turbine compressor unit with piping modifications and other appurtenant facilities, abandonment in place of the existing Compressor Unit 5, and placement on standby of existing Compressor Units 6 and 7.
- New ancillary facilities including a main line valve and tie-in facility in Henderson County, Kentucky and upgrades to an existing M&R station in Johnson County, Indiana.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the proposed facilities would disturb about 402 acres of land for the aboveground facilities and the pipeline. Following construction, Texas Gas would maintain about 152 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses. About 47.5 percent of the proposed pipeline route parallels existing pipeline, utility, or road rights-of-way.

NEPA Process and the Environmental Document

Any environmental document issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed project under the relevant general resource areas:

- Geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- air quality and noise; and
- reliability and safety.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate other issues from further study and discussion in the environmental document.

Following this scoping period, Commission staff will determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the issues. If Commission staff prepares an EA, a Notice of Schedule for the Preparation of an Environmental Assessment will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed project. If Commission staff prepares an EIS, a Notice of Intent to Prepare an EIS/Notice of Schedule will be issued, which will open up an additional comment period. Staff would then prepare a draft EIS which would be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary[2] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the environmental document.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] The environmental document for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number CP21–467–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

OR

(2) Return the attached ''Mailing List Update Form'' (appendix 2).

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary.'' For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Section 1501.8.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: July 29, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–16687 Filed 8–4–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–477–000]

Enable Gas Transmission, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on July 22, 2021, Enable Gas Transmission, LLC (Enable), 910 Louisiana Street, Ste. 48040, Houston, Texas 77002, filed in the above referenced docket a prior notice pursuant to sections 157.205, 157.208, and 157.211 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act (NGA), and Enable's blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001, for authorization to construct: (i) The 2.6-mile-long, 8-inch-diameter JM–44 pipeline from Enable's existing Line J to a new meter station; (ii) the Nucor Meter Station; (iii) the 0.6-mile-long, 8-inch-diameter JM–44A pipeline; and (iv) aboveground auxiliary facilities at the tie-in locations on Enable's existing Line J and Line JM–40 all located in Mississippi County, Arkansas (Nucor Pipeline Project). The project will allow Enable to transport 5,000 dekatherms per day of firm transportation capacity to Nucor Corporation's Cold Steel Mill (Nucor). Enable states that the project is being proposed because they claim that the local distribution company that currently delivers Nucor's natural gas cannot meet Nucor's additional volumes requirements. The estimated cost for the project is $3,798,095, 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 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 Lisa Yoho, Sr. Director Regulatory and FERC Compliance, Enable Gas Transmission, LLC, 910 Louisiana Street, 48th floor, Houston, Texas 77002, by phone: (346) 701–2539, by facsimile: (346) 701–2905, or by email: *lisa.yoho@enablemidstream.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 September 28, 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,[1] any person [2] 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,[3] and must be submitted by the protest deadline, which is September 28, 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 Procedure [4] and the regulations under the NGA [5] by the intervention deadline for the project, which is September 28, 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

[1] 18 CFR 157.205.

[2] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[3] 18 CFR 157.205(e).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

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 September 28, 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.

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 CP21–477–000 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''; or [6]

(2) You can file a paper copy of your submission by mailing it to the address below.[7] Your submission must reference the Project docket number CP21–477–000.

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: Lisa Yoho, Sr. Director Regulatory and FERC Compliance, Enable Gas Transmission, LLC, 910 Louisiana Street, 48th floor, Houston, Texas 77002 or *lisa.yoho@enablemidstream.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: July 30, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–16720 Filed 8–4–21; 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 electric corporate filings:

Docket Numbers: EC21–56–000.

Applicants: Duke Energy Indiana, LLC, GIC Infra Holdings Pte. Ltd.

Description: Response to July 27, 2021 Deficiency Letter of Duke Energy Indiana, LLC et al.

Filed Date: 7/29/21.

Accession Number: 20210729–5136.

Comments Due: 5 p.m. ET 8/19/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1933–008; ER10–2615–015; ER10–2934–016; ER10–2959–018; ER11–2335–017; ER11–3859–021; ER11–4634–010; ER12–199–017; ER13–321–007; ER14–1699–011; ER15–1456–010; ER15–1457–010; ER15–748–007; ER17–436–009; ER18–920–008; ER19–464–003; ER19–968–004; ER20–464–001.

Applicants: Beaver Falls, L.L.C., Chambers Cogeneration, Limited Partnership, Coram California Development, L.P., Dighton Power, LLC, Fairless Energy, L.L.C., Garrison Energy Center LLC, Greenleaf Energy Unit 2, LLC, Hazleton Generation LLC, Logan Generating Company, L.P., Manchester Street, L.L.C., Marco DM Holdings, L.L.C., Marcus Hook Energy, L.P., Milford Power, LLC, Plum Point Energy Associates, LLC, Plum Point Services Company, LLC, RockGen Energy LLC, Syracuse, L.L.C., Vermillion Power, L.L.C.

Description: Notice of Change in Status of RockGen Energy, LLC, et al.

Filed Date: 7/28/21.

Accession Number: 20210728–5203.

Comments Due: 5 p.m. ET 8/18/21.

Docket Numbers: ER21–1844–001.

Applicants: PJM Interconnection, L.L.C.

Description: Compliance filing: Compliance Filing re Capital Recovery Factor Pursuant to July 2 Order to be effective 7/2/2021.

Filed Date: 7/30/21.

Accession Number: 20210730–5143.

Comments Due: 5 p.m. ET 8/20/21.

Docket Numbers: ER21–2118–001.

Applicants: Dodge Flat Solar, LLC.

Description: Tariff Amendment: Amendment to the Dodge Flat Solar, LLC Application for MBR Authority to be effective 8/10/2021.

Filed Date: 7/30/21.

Accession Number: 20210730–5032.

Comments Due: 5 p.m. ET 8/20/21.

Docket Numbers: ER21–2293–001.

Applicants: Fish Springs Ranch Solar, LLC.

Description: Tariff Amendment: Amend Fish Springs Ranch Solar, LLC Application for MBR Authorization to be effective 8/30/2021.

Filed Date: 7/30/21.

Accession Number: 20210730–5082.

Comments Due: 5 p.m. ET 8/20/21.

Docket Numbers: ER21–2556–000

Applicants: South River OnSite Generation, LLC.

Description: Baseline eTariff Filing: MBR Tariff Authority to be effective 10/1/2021.

Filed Date: 7/29/21.

Accession Number: 20210729–5105.

Comments Due: 5 p.m. ET 8/19/21.

Docket Numbers: ER21–2557–000.

Applicants: Aron Energy Prepay 5 LLC.

Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 9/28/2021.

[6] 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.

[7] Hand-delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Filed Date: 7/29/21.
Accession Number: 20210729–5107.
Comments Due: 5 p.m. ET 8/19/21.

Docket Numbers: ER21–2558–000.
Applicants: New England Power Pool Participants Committee.
Description: § 205(d) Rate Filing: August 2021 Membership Filing to be effective 7/1/2021.
Filed Date: 7/30/21.
Accession Number: 20210730–5000.
Comments Due: 5 p.m. ET 8/20/21.

Docket Numbers: ER21–2559–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3324R1 KPP and Sunflower Meter Agent Agreement to be effective 9/1/2021.
Filed Date: 7/30/21.
Accession Number: 20210730–5006.
Comments Due: 5 p.m. ET 8/20/21.

Docket Numbers: ER21–2560–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Revisions to Modify Uninstructed Resource Deviation Calculation to be effective 10/1/2021.
Filed Date: 7/30/21.
Accession Number: 20210730–5029.
Comments Due: 5 p.m. ET 8/20/21.

Docket Numbers: ER21–2561–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 1876R8 KEPCO NITSA NOA to be effective 7/1/2021.
Filed Date: 7/30/21.
Accession Number: 20210730–5033.
Comments Due: 5 p.m. ET 8/20/21.

Docket Numbers: ER21–2562–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Revisions to Definitive Interconnection System Impact Study Process to be effective 10/1/2021.
Filed Date: 7/30/21.
Accession Number: 20210730–5039.
Comments Due: 5 p.m. ET 8/20/21.

Docket Numbers: ER21–2563–000.
Applicants: NextEra Energy Transmission New York, Inc., New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 205: NextEra Energy Formula Rate to be effective 9/30/2021.
Filed Date: 7/30/21.
Accession Number: 20210730–5040.
Comments Due: 5 p.m. ET 8/20/21.

Docket Numbers: ER21–2564–000.
Applicants: The Dayton Power and Light Company, PJM Interconnection, L.L.C.
Description: Compliance filing: Dayton Compliance Filing Pursuant to July 15, 2021 Order in Docket No. ER20–1068 to be effective 10/3/2020.
Filed Date: 7/30/21.
Accession Number: 20210730–5041.
Comments Due: 5 p.m. ET 8/20/21.

Docket Numbers: ER21–2565–000.
Applicants: Foote Creek II, LLC.
Description: Tariff Cancellation: Notice of Cancellation to be effective 7/31/2021.
Filed Date: 7/30/21.
Accession Number: 20210730–5049.
Comments Due: 5 p.m. ET 8/20/21.

Docket Numbers: ER21–2566–000.
Applicants: Foote Creek III, LLC.
Description: Tariff Cancellation: Notice of Cancellation to be effective 7/31/2021.
Filed Date: 7/30/21.
Accession Number: 20210730–5054.
Comments Due: 5 p.m. ET 8/20/21.

Docket Numbers: ER21–2567–000
Applicants: Foote Creek IV, LLC.
Description: Tariff Cancellation: Notice of Cancellation to be effective 7/31/2021.
Filed Date: 7/30/21.
Accession Number: 20210730–5056.
Comments Due: 5 p.m. ET 8/20/21.

Docket Numbers: ER21–2568–000.
Applicants: Public Service Company of New Hampshire.
Description: § 205(d) Rate Filing: Great Lakes Hydro American, LLC—Large Generator Interconnection Agreement to be effective 7/31/2021.
Filed Date: 7/30/21.
Accession Number: 20210730–5077.
Comments Due: 5 p.m. ET 8/20/21.

Docket Numbers: ER21–2568–000.
Applicants: Public Service Company of New Hampshire.
Description: § 205(d) Rate Filing: Great Lakes Hydro American, LLC—Large Generator Interconnection Agreement to be effective 7/31/2021.
Filed Date: 7/30/21.
Accession Number: 20210730–5078.
Comments Due: 5 p.m. ET 8/20/21.

Docket Numbers: ER21–2569–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to WMPA, Service Agreement No. 5860; Queue No. AF2–099 to be effective 11/10/2020.
Filed Date: 7/30/21.
Accession Number: 20210730–5079.
Comments Due: 5 p.m. ET 8/20/21.

Docket Numbers: ER21–2570–000
Applicants: TC Energy Marketing Inc.
Description: Baseline eTariff Filing: Application for MBR Authorization and Request for Waivers and Blanket Approvals to be effective 9/30/2021.
Filed Date: 7/30/21.
Accession Number: 20210730–5090.
Comments Due: 5 p.m. ET 8/20/21.

Docket Numbers: ER21–2571–000.
Applicants: Midcontinent Independent System Operator, Inc., Consumers Energy Company, Michigan Electric Transmission Company, LLC.
Description: § 205(d) Rate Filing: 2021–07–30_SA 3315 METC–CE TSA Amendment Group A to be effective 9/30/2021.
Filed Date: 7/30/21.
Accession Number: 20210730–5098.
Comments Due: 5 p.m. ET 8/20/21.

Docket Numbers: ER21–2572–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Tariff Cancellation: Notice of Cancellation of Rate Schedule FERC No. 239 to be effective 9/30/2021.
Filed Date: 7/30/21.
Accession Number: 20210730–5103.
Comments Due: 5 p.m. ET 8/20/21.

Docket Numbers: ER21–2573–000.
Applicants: HollyFrontier Puget Sound Refining LLC.
Description: Baseline eTariff Filing: Market-Based Rate Tariff to be effective 11/1/2021.
Filed Date: 7/30/21.
Accession Number: 20210730–5108.
Comments Due: 5 p.m. ET 8/20/21.

Docket Numbers: ER21–2574–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: Rate Schedule No. 211 Amendments to be effective 9/29/2021.
Filed Date: 7/30/21.
Accession Number: 20210730–5110.
Comments Due: 5 p.m. ET 8/20/21.

Docket Numbers: ER21–2575–000.
Applicants: Duke Energy Carolinas, LLC.
Description: § 205(d) Rate Filing: DEC-CEPCI NITSA SA–447 to be effective 7/1/2021.
Filed Date: 7/30/21.
Accession Number: 20210730–5112.
Comments Due: 5 p.m. ET 8/20/21.

Docket Numbers: ER21–2576–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2021–07–30_RPU Attachment O Filing to be effective 10/1/2021.
Filed Date: 7/30/21.
Accession Number: 20210730–5116.
Comments Due: 5 p.m. ET 8/20/21.

Docket Numbers: ER21–2577–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: CBR Tariff Revision to be effective 9/29/2021.
Filed Date: 7/30/21.
Accession Number: 20210730–5123.
Comments Due: 5 p.m. ET 8/20/21.

Docket Numbers: ER21–2578–000.
Applicants: Duke Energy Progress, LLC.

Description: Tariff Cancellation: DEP–CPI SA No. 238 Cancellation to be effective 9/30/2021.

Filed Date: 7/30/21.

Accession Number: 20210730–5138.

Comments Due: 5 p.m. ET 8/20/21.

Docket Numbers: ER21–2579–000.

Applicants: EDF Trading North America, LLC.

Description: Application to Recover Fuel Procurement Costs of EDF Trading North America LLC.

Filed Date: 7/29/21.

Accession Number: 20210729–5184.

Comments Due: 5 p.m. ET 8/19/21.

Docket Numbers: ER21–2580–000.

Applicants: Duke Energy Carolinas, LLC.

Description: § 205(d) Rate Filing: DEC–CEPCI SA–448 Metering Agreement to be effective 7/1/2021.

Filed Date: 7/30/21.

Accession Number: 20210730–5160.

Comments Due: 5 p.m. ET 8/20/21.

Docket Numbers: ER21–2581–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: City of Independence Stated Rate Filing to be effective 10/1/2021.

Filed Date: 7/30/21.

Accession Number: 20210730–5164.

Comments Due: 5 p.m. ET 8/20/21.

Docket Numbers: ER21–2582–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Revisions to Application of Minimum Offer Price Rule (MOPR) to be effective 9/28/2021.

Filed Date: 7/30/21.

Accession Number: 20210730–5166.

Comments Due: 5 p.m. ET 8/20/21.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES21–55–000; ES21–56–000; ES21–57–000; ES21–58–000; ES21–59–000.

Applicants: AEP Generating Company, Kentucky Power Company, Kingsport Power Company, Southwestern Electric Power Company, Wheeling Power Company.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of AEP Generating Company, et al.

Filed Date: 7/30/21.

Accession Number: 20210730–5163.

Comments Due: 5 p.m. ET 8/20/21.

Docket Numbers: ES21–60–000.

Applicants: Southwest Power Pool, Inc.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Southwest Power Pool, Inc.

Filed Date: 7/30/21.

Accession Number: 20210730–5172.

Comments Due: 5 p.m. ET 8/20/21.

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: July 30, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–16722 Filed 8–4–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21–2555–000]

Martinsville OnSite Generation, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Martinsville OnSite Generation, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 19, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: July 30, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–16716 Filed 8–4–21; 8:45 am]

BILLING CODE 6717–01–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meetings

AGENCY: Farm Credit Administration Board, Farm Credit Administration.

ACTION: Notice, regular meeting.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act, of the forthcoming regular meeting of the Farm Credit Administration Board.

DATES: The regular meeting of the Board will be held August 12, 2021, from 9:00 a.m. until such time as the Board may conclude its business. *Note: Because of the COVID–19 pandemic, we will conduct the board meeting virtually. If you would like to observe the open portion of the virtual meeting, see instructions below for board meeting visitors.*

ADDRESSES: To observe the virtual meeting, go to *FCA.gov,* select ''Newsroom,'' then ''Events.'' There you will find a description of the meeting and a link to ''Instructions for board meeting visitors.'' See **SUPPLEMENTARY INFORMATION** for further information about attendance requests.

FOR FURTHER INFORMATION CONTACT: Dale Aultman, Secretary to the Farm Credit Administration Board (703) 883–4009. TTY is (703) 883–4056.

SUPPLEMENTARY INFORMATION: Instructions for attending the virtual meeting: This meeting of the Board will be open to the public. If you wish to observe, at least 24 hours before the meeting, go to *FCA.gov,* select ''Newsroom,'' then ''Events.'' There you will find a description of the meeting and a link to ''Instructions for board meeting visitors.'' If you need assistance for accessibility reasons or if you have any questions, contact Dale Aultman, Secretary to the Farm Credit Administration Board, at (703) 883–4009. The matters to be considered at the meeting are as follows:

Open Session

Approval of Minutes

- July 8, 2021

Report

- Annual Report on the Farm Credit System's Young, Beginning, and Small Farmer Mission Performance: 2020 Results

New Business

- Standards of Conduct—Final Rule
- Fall 2021 Unified Agenda

Dated: August 3, 2021.

Dale Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2021–16867 Filed 8–3–21; 4:15 pm]

BILLING CODE 6705–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Tuesday, August 10, 2021 at 10:00 a.m. and its continuation at the conclusion of the open meeting on August 11, 2021.

PLACE: 1050 First Street NE, Washington, DC. (This meeting will be a virtual meeting).

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance matters pursuant to 52 U.S.C. 30109.

Matters relating to internal personnel decisions, or internal rules and practices.

Investigatory records compiled for law enforcement purposes and production would disclose investigative techniques.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Laura E. Sinram,

Acting Secretary and Clerk of the Commission.

[FR Doc. 2021–16864 Filed 8–3–21; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Resumption of In-Person Hearings

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Notice.

SUMMARY: The Federal Mine Safety and Health Review Commission (the ''Commission'') is resuming in-person hearings in the manner described below until December 31, 2021, or until such earlier date determined by the Commission's Office of the Chief Administrative Law Judge (''OCALJ'') and published in a notice appearing in the **Federal Register** and posted on the Commission's website (*www.fmshrc.gov*).

DATES: *Applicable:* September 1, 2021.

FOR FURTHER INFORMATION CONTACT: Sarah Stewart, Deputy General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, at (202) 434–9935.

SUPPLEMENTARY INFORMATION: Commission Administrative Law Judges are committed to a high standard to protect the health and safety of all attorneys, representatives, parties, and witnesses who may appear before them, during the Coronavirus 2019 (COVID–19) pandemic, while continuing the agency's mission. On July 30, 2021, Commission Chief Administrative Law Judge Glynn F. Voisin issued an order, which is posted on the Commission's website (*www.fmshrc.gov*). The contents of the order are set forth in this notice.

As of September 1, 2021, the Commission will resume the pre-pandemic norm of in-person hearings, but for the duration of the Chief Judge's July 30 order, all hearings are subject to the following terms set forth in the order.

Upon motion of a party or if necessary for safety, Commission Judges may, at their sole discretion, hold remote hearings or require specific procedures to provide for safety. Commission Judges shall exercise this discretion within uniform parameters as set forth herein. Each Judge shall determine (1) when to use remote hearings (*e.g.,* via Zoom) in lieu of in-person hearings or (2) specific safety procedures to be used at an in-person hearing.

In determining use of a remote hearing, Judges will consider safety factors on a case-by-case basis. Judges also have the discretion to hold a hybrid hearing, that includes both in-person and video hearing. Judges will ensure all parties appearing *pro se* who are required to participate in a remote hearing have access to necessary equipment.

Prior to setting in-person hearings Judges will have a conference call with the attorneys and representatives of each of the parties, to discuss the considerations of the parties for the in-person hearing and to seek a commitment to all requirements ultimately set forth by the Judge. Judges may discuss the agency's travel guidelines, protocols, and safety measures but will not ask if participants are vaccinated. All fully vaccinated persons may attend the hearing in person. Persons who are not fully vaccinated, or who are not comfortable with travel or appearing in person, may make a request to attend the hearing virtually.

The Judge will set a hearing location after considering the safety and health rules currently in place by the state and local public health entities. In choosing a courtroom, the Judge will take into consideration the rules and requirements of that courthouse or hearing facility, as well as all applicable federal, state, and local regulations and guidelines. If the hearing is to be a hybrid hearing, the Judge will also consider the availability of internet and video needs in the courtroom.

During the prehearing conference, the Judge will inform the parties of the

state, local and courtroom requirements and seek a commitment to adhere to those requirements. The requirements apply to all attorneys, assistants, parties, and witnesses. The discussion will also address who may enter the courtroom, when, and what safety measures, such as masks and social distancing, must be implemented. No person may enter the courtroom, or the witness room without the permission of the Judge. The Judge may consider allowing persons who are not fully vaccinated to enter the courtroom, but they must wear masks and practice social distancing.

All court reporters will be notified that they must be vaccinated.

The Judge may consider all factors, in totality, in determining if a remote hearing will be held and who may be present for the hearing. No single factor is dispositive. These procedures shall be in place until December 31, 2021, unless extended or modified by order. The order shall be posted on the Commission's website (*www.fmshrc.gov*) and the contents of the order will be published in a notice appearing in the **Federal Register**.

Authority: 30 U.S.C. 823; 29 CFR part 2700.

Dated: July 30, 2021.

Sarah L. Stewart,

Deputy General Counsel, Federal Mine Safety and Health Review Commission.

[FR Doc. 2021–16661 Filed 8–4–21; 8:45 am]

BILLING CODE 6735–01–P

FEDERAL RESERVE SYSTEM

Solicitation of Statements of Interest for Membership on the Insurance Policy Advisory Committee

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Notice.

SUMMARY: The Economic Growth, Regulatory Relief, and Consumer Protection Act established at the Board an Insurance Policy Advisory Committee (IPAC). This notice advises individuals who wish to serve as IPAC members of the annual opportunity to be considered for the IPAC.

DATES: Individuals that submit a Statement of Interest that is received by the Board from the first Monday in August through the first Monday in October of each year will be considered for appointments to the IPAC announced in the fourth calendar quarter of the same year. Statements of Interest received outside the period from the first Monday in August through the first Monday in October generally will not be considered.

ADDRESSES: Individuals seeking an appointment to the IPAC may send a Statement of Interest by email to *IPAC@frb.gov.* The Statement of Interest contains only contact information. Candidates also may choose to provide additional information. Candidates may send this information by email to *IPAC@frb.gov.* The Privacy Act Statement for IPAC Member Selection, which describes the purposes, authority, effects of nondisclosure, and uses of this information, can be found at *https://www.federalreserve.gov/aboutthefed/ipac-privacy.htm.*

Individuals also may mail Statements of Interest and any additional information to the Board of Governors of the Federal Reserve System, Attn: Insurance Policy Advisory Committee, 20th Street and Constitution Ave. NW, Washington, DC 20551.

FOR FURTHER INFORMATION CONTACT: Jan Bauer, Senior Insurance Policy Analyst, (202) 475–7697 or Thomas Sullivan, Senior Associate Director, (202) 452–3000, Division of Supervision and Regulation; or *IPAC@frb.gov.*

SUPPLEMENTARY INFORMATION: The Economic Growth, Regulatory Relief, and Consumer Protection Act established at the Board an Insurance Policy Advisory Committee (IPAC) to advise the Board on international capital standards and other insurance matters. This notice advises individuals of the opportunity to be considered for appointment to the IPAC. To assist with the appointment of IPAC members, the Board considers information submitted by the candidate, public information, and any other relevant information the Board determines to consider.

Council Size and Terms

The IPAC has at most 21 members. IPAC members serve staggered three-year terms. Members are appointed to three-year terms unless the Board appoints a member to fill a vacant unexpired term. A member that is appointed to serve a three-year term begins his or her service on the first January 1 occurring after his or her appointment. A member appointed to fill an vacant unexpired term serves for the remaining time of the term. The Board provides a nominal honorarium and reimburses members only for their actual travel expenses, subject to Board policy.

Statement of Interest

A Statement of Interest must contain the following information:

- Full name;
- Address;
- Phone number; and
- Email address

At their option, candidates may provide additional information for consideration.

Qualifications

IPAC candidates should be insurance experts. The Board provides equal appointment opportunity to all persons without regard to race, color, religion, sex (including sexual orientation, gender identity, and pregnancy), national origin, age, disability, genetic information, or military service. In addition, the Board is committed to a diverse committee and seeks a diverse set of expert perspectives from the various sectors of the U.S. insurance industry including life insurance, property and casualty insurance and reinsurance, agents and brokers, academics, consumer advocates, and experts on issues facing underserved insurance communities and consumers. The Board also seeks relevant actuarial, legal, regulatory, and accounting expertise, as well as expertise on lines of business underwritten by its currently supervised population of insurance institutions.

Members must be willing and able to participate in conference calls and prepare for and attend meetings in person. Membership and attendance is not delegable.

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Supervision and Regulation under delegated authority.

Ann Misback,

Secretary of the Board.

[FR Doc. 2021–16669 Filed 8–4–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Public Health Reassessment and Order Suspending the Right To Introduce Certain Persons From Countries Where a Quarantinable Communicable Disease Exists

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), a component of the Department of Health and Human Services (HHS), announces an Order to replace and supersede the Order Suspending the Right to Introduce Certain Persons from

Countries Where a Quarantinable Communicable Disease Exists, issued on October 13, 2020 (''October Order''). Following an assessment of the current status of the COVID–19 public health emergency and the situation in congregate settings where noncitizens seeking to enter the United States are processed and held, CDC has determined that an Order remains appropriate at this time for all ''covered noncitizens'' as defined in the order. Unaccompanied noncitizen children, already excepted under a July 16, 2021 order, remain excepted from the order's coverage. In addition, CDC is continuing an exception for individuals on a case-by-case basis, based on the totality of the circumstances, and is incorporating an additional exception for programs approved by the U.S. Department of Homeland Security (DHS) that incorporate appropriate COVID–19 mitigation protocols as recommended by CDC.

DATES: This Order went into effect August 2, 2021.

FOR FURTHER INFORMATION CONTACT: Tiffany Brown, Deputy Chief of Staff, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–10, Atlanta, GA 30329. Phone: 404–639–7000. Email: *cdcregulations@cdc.gov.*

SUPPLEMENTARY INFORMATION: CDC has determined that an Order under 42 U.S.C. 265 remains necessary to protect U.S. citizens, U.S. nationals, lawful permanent residents, personnel and noncitizens at the ports of entry (POE) and U.S. Border Patrol stations, and destination communities in the United States during the COVID–19 public health emergency. This Order reflects the current, highly dynamic conditions regarding COVID–19, including variants of concern and levels of vaccination, as well as evolving circumstances specific to the U.S. borders. As facts change, CDC may further modify the Order. This Order will remain in place until either the expiration of the Secretary of HHS' declaration that COVID–19 constitutes a public health emergency, or the CDC Director determines that the danger of further introduction of COVID–19 into the United States has declined such that continuation of the Order is no longer necessary to protect public health, whichever occurs first. The circumstances necessitating the Order will be reassessed at least every 60 days. This Order continues the suspension of the right to introduce ''covered noncitizens,'' [1] into the United States along the U.S. land and adjacent coastal borders. In recognition of the specific COVID–19 mitigation measures available in facilities providing care for Unaccompanied Noncitizen Children (UC), CDC excepted UC from the October Order [2] on July 16, 2021 (July Exception) and continues that exception herein.[3] In addition, CDC is continuing an exception for individuals on a case-by-case basis, based on the totality of the circumstances, and is incorporating an additional exception for programs approved by the U.S. Department of Homeland Security (DHS) that incorporate appropriate COVID–19 mitigation protocols as recommended by CDC.

A copy of the Order is provided below, and a copy of the signed Order can be found at *https://www.cdc.gov/coronavirus/2019-ncov/downloads/CDC-Order-Suspending-Right-to-Introduce-_Final_8-2-21.pdf.*

[1] The term ''covered noncitizens'' is defined as persons traveling from Canada or Mexico (regardless of their country of origin) who would otherwise be introduced into a congregate setting in a POE or U.S. Border Patrol station at or near the U.S. land and adjacent coastal borders subject to certain exceptions detailed below; this includes noncitizens who do not have proper travel documents, noncitizens whose entry is otherwise contrary to law, and noncitizens who are apprehended at or near the border seeking to unlawfully enter the United States between POE.

[2] Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists, 85 FR 65806 (Oct. 16, 2020). The October Order replaced the Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists, issued on March 20, 2020 (March Order) and subsequently extended and amended. Notice of Order Under Sections 362 and 365 of the Public Health Service Act Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists, 85 FR 17060 (Mar. 26, 2020); Extension of Order Under Sections 362 and 365 of the Public Health Service Act; Order Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists, 85 FR 22424 (Apr. 22, 2020); Amendment and Extension of Order Under Sections 362 and 365 of the Public Health Service Act; Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists, 85 FR 31503 (May 26, 2020).

[3] Public Health Determination Regarding an Exception for Unaccompanied Noncitizen Children from Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists, Centers for Disease Control and Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/more/pdf/NoticeUnaccompaniedChildren.pdf* (July 16, 2021); *see* 86 FR 38717 (July 22, 2021). The July Exception relating to UC is hereby made a part of this Order and incorporated by reference as if fully set forth herein.

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES CENTERS FOR DISEASE CONTROL AND PREVENTION (CDC)

Order Under Sections 362 & 365 of the Public Health Service Act

(42 U.S.C. 265, 268) and 42 CFR 71.40

Public Health Reassessment and Order Suspending the Right To Introduce Certain Persons From Countries Where a Quarantinable Communicable Disease Exists

Executive Summary

The Centers for Disease Control and Prevention (CDC), a component of the U.S. Department of Health and Human Services (HHS), is hereby replacing and superseding the Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists, issued on October 13, 2020 (October Order). The instant Order continues the suspension of the right to introduce ''covered noncitizens,'' as defined herein,[4] into the United States along the U.S. land and adjacent coastal borders. In recognition of the specific COVID–19 mitigation measures available in facilities providing care for Unaccompanied Noncitizen Children (UC), CDC excepted UC from the October Order on July 16, 2021 (July Exception) and continues that exception herein.[5] Following an assessment of the current status of the COVID–19 public health emergency and the situation in congregate settings where noncitizens seeking to enter the United States are processed and held, CDC has determined that an Order remains appropriate at this time for all other covered noncitizens as described herein. As outlined below, CDC is continuing an exception for individuals on a case-by-case basis, based on the totality of the circumstances, and is incorporating an additional exception for programs approved by the U.S. Department of Homeland Security (DHS) that incorporate appropriate COVID–19 mitigation protocols as recommended by CDC.

CDC has determined that an Order under 42 U.S.C. 265 remains necessary

[4] *See infra* Section III.A.

[5] Public Health Determination Regarding an Exception for Unaccompanied Noncitizen Children from Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists, Centers for Disease Control and Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/more/pdf/NoticeUnaccompaniedChildren.pdf* (July 16, 2021); *see* 86 FR 38717 (July 22, 2021). The July Exception relating to UC is hereby made a part of this Order and incorporated by reference as if fully set forth herein.

to protect U.S. citizens, U.S. nationals, lawful permanent residents, personnel and noncitizens at the ports of entry (POE) and U.S. Border Patrol stations, and destination communities in the United States during the COVID–19 public health emergency. This Order reflects the current, highly dynamic conditions regarding COVID–19, including variants of concern and levels of vaccination, as well as evolving circumstances specific to the U.S. borders. As facts change, CDC may further modify the Order. This Order will remain in place until either the expiration of the Secretary of HHS' declaration that COVID–19 constitutes a public health emergency, or the CDC Director determines that the danger of further introduction of COVID–19 into the United States has declined such that continuation of the Order is no longer necessary to protect public health, whichever occurs first. The circumstances necessitating the Order will be reassessed at least every 60 days.

Outline of Reassessment and Order

I. Background
- A. Current Status of COVID–19 Public Health Emergency
- B. Public Health Factors Related to COVID–19
  1. Manner of COVID–19 Transmission
  2. Emerging Variants of the SARS–CoV–2 Virus
  3. Risks of COVID–19 Transmission Specific To Congregate Settings
  4. Availability of Testing, Vaccines, and Other Mitigation Measures
  5. Impact on U.S. Communities and Healthcare Resources

II. Public Health Reassessment
- A. Immigration Processing and Public Health Impacts
- B. Public Health Assessment of Single Adults and Family Units
- C. Comparison to Unaccompanied Noncitizen Children
- D. Summary of Findings

III. Legal Basis for the Order

IV. Issuance and Implementation of the Order
- A. Covered Noncitizens
- B. Exceptions
- C. APA, Review, and Termination

I. Background

Coronavirus disease 2019 (COVID–19) is a quarantinable communicable disease [6] caused by the SARS–CoV–2 virus. As part of U.S. government efforts to mitigate the introduction, transmission, and spread of COVID–19, CDC issued an Order on October 13, 2020 (October Order), replacing an Order initially issued on March 20, 2020 (March Order),[7] suspending the right to introduce [8] certain persons into the United States from countries or places where the quarantinable communicable disease exists in order to protect the public health from an increase in risk of the introduction of COVID–19. The October Order applied specifically to covered noncitizens who would otherwise be introduced into a congregate setting in land or coastal POE or U.S. Border Patrol stations at or near the U.S. borders [9] with Canada and Mexico. On February 17, 2021, CDC published a notice announcing the temporary exception of unaccompanied noncitizen children (UC) [10] encountered in the United States from the October Order.[11] The exception of UC from the October Order was confirmed with the publication of the July Exception.[12]

POE and U.S. Border Patrol stations are operated by U.S. Customs and Border Protection (CBP), an agency within DHS. The March and October Orders were intended to reduce the risk of COVID–19 introduction, transmission, and spread in POE and U.S. Border Patrol stations by significantly reducing the number and density of covered noncitizens held in these congregate settings, thereby reducing risks to U.S. citizens and residents, DHS/CBP personnel and noncitizens at the facilities, and the healthcare systems in local communities overall. Because of the congregate nature of these facilities and the sustained community transmission of COVID–19, including the highly transmissible B.1.617.2 (Delta) variant, in both the United States and migrants' countries of origin and transit, at this time, there continues to be a high risk of COVID–19 outbreaks in these facilities following the introduction of an infected person. Upon reassessment of the current situation with respect to the pandemic and the situation at the U.S. borders, CDC finds an Order under 42 U.S.C. 265 for Single Adults (SA) [13] and Family Units (FMU) [14] remains necessary at this time, as discussed in detail below. CDC also recognizes the availability of testing, vaccines, and other mitigation protocols can minimize risk in this area. As the ability of DHS facilities to employ mitigation measures to address the COVID–19 public health emergency increases, CDC anticipates additional lifting of restrictions.

A. Current Status of COVID–19 Public Health Emergency

Since late 2019, SARS–CoV–2, the virus that causes COVID–19, has spread throughout the world, resulting in a pandemic. As of July 28, 2021, there have been over 195 million confirmed cases of COVID–19 globally, resulting in over 4.1 million deaths.[15] The United

[6] Quarantinable communicable diseases are any of the communicable diseases listed in Executive Order, as provided under § 361 of the Public Health Service Act (42 U.S.C. 264). 42 CFR 71.1. The list of quarantinable communicable diseases currently includes cholera, diphtheria, infectious tuberculosis, plague, smallpox, yellow fever, viral hemorrhagic fevers (Lassa, Marburg, Ebola, Crimean-Congo, South American, and others not yet isolated or named), severe acute respiratory syndromes (including Middle East respiratory syndrome and COVID–19), and influenza caused by novel or reemergent influenza viruses that are causing, or have the potential to cause, a pandemic. *See* Exec. Order 13295, 68 FR 17255 (Apr. 4, 2003), as amended by Exec. Order 13375, 70 FR 17299 (Apr. 1, 2005) and Exec. Order 13674, 79 FR 45671 (July 31, 2014).

[7] Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists, 85 FR 65806 (Oct. 16, 2020). The October Order replaced the Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists, issued on March 20, 2020 (March Order), and subsequently extended and amended. Notice of Order Under Sections 362 and 365 of the Public Health Service Act Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists, 85 FR 17060 (Mar. 26, 2020); Extension of Order Under Sections 362 and 365 of the Public Health Service Act; Order Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists, 85 FR 22424 (Apr. 22, 2020); Amendment and Extension of Order Under Sections 362 and 365 of the Public Health Service Act; Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists, 85 FR 31503 (May 26, 2020).

[8] *Suspension of the right to introduce* means to cause the temporary cessation of the effect of any law, rule, decree, or order pursuant to which a person might otherwise have the right to be introduced or seek introduction into the United States. 42 CFR 71.40(b)(5).

[9] When U.S. Customs and Border Protection (CBP) or the U.S. Department of Homeland Security (DHS) partner agencies encounter noncitizens off the coast closely adjacent to the land borders, it transfers the noncitizens for processing in POE or U.S. Border Patrol stations closest to the encounter. Absent the October Order, such noncitizens would be held in the same congregate settings and holding facilities as any encounters along the land border, resulting in similar public health concerns related to the introduction, transmission, and spread of COVID–19.

[10] As stated in the July Exception, CDC's understanding is that UC are a class of individuals similar to or the same as those individuals who would be considered ''unaccompanied alien children'' (see 6 U.S.C. 279) for purposes of HHS Office of Refugee Resettlement custody, were DHS to make the necessary immigration determinations under Title 8 of the U.S. Code. 86 FR 38717, 38718 at note 4.

[11] Notice of Temporary Exception from Expulsion of Unaccompanied Noncitizen Children Pending Forthcoming Public Health Determination, 86 FR 9942 (Feb. 17, 2021).

[12] *Supra* note 2.

[13] A single adult (SA) is any noncitizen adult 18 years or older who is not an individual in a ''family unit,'' *see infra* note 11.

[14] An individual in a family unit (FMU) includes any individual in a group of two or more noncitizens consisting of a minor or minors accompanied by their adult parent(s) or legal guardian(s). Any statistics regarding FMU count the number of individuals in a family unit rather than counting the groups.

[15] *Coronavirus disease (COVID–19) pandemic,* World Health Organization, *https://covid19.who.int/* (last visited July 28, 2021).

States has reported over 34 million cases resulting in over 609,000 deaths due to the disease [16] and is currently averaging around 61,976 new cases of COVID–19 a day as of July 27, 2021 with high community transmission.[17] Although several of the key indicators of transmission and spread of COVID–19 in the United States improved during the first half of 2021, variants of concern, particularly the more transmissible Delta variant, have driven a stark increase in COVID–19 cases, hospitalizations, and deaths. COVID–19 cases increased approximately 400% between June 19 and July 28, 2021.[18]

Many countries have begun widespread vaccine administration; however, 78 countries continue to experience high or substantial incidence rates (≥50 cases per 100,000 people in the last seven days) and 123 countries, including the United States, are experiencing an increasing incidence of reported new cases.[19] It is imperative that individuals and communities stay vigilant and that vaccination and other COVID–19 mitigation efforts are maintained. As the Delta variant continues to spread, both the United States and Mexico are experiencing high or substantial incidence rates with 137.9 and 68.6 daily cases per 100,000 persons over a seven-day average, respectively; in Canada, the incidence rate is 8.0. The United States saw a 91.0% increase in new cases over the past week, Mexico experienced a 30.2% increase in new cases. During the same time period, the incidence rate in Canada increased by 14.8%.[20]

COVID–19 was first declared a public health emergency in January 2020 [21] and the U.S. government and CDC have implemented a number of COVID–19 mitigation and response measures since that time. Many of these mitigation measures have involved restrictions on international travel and migration.[22] Other measures have focused on recommending and enforcing COVID–19 mitigation efforts, including physical distancing and mask-wearing.[23] Recent concerns regarding the spread of the Delta variant prompted CDC to release updated guidance calling for vaccinated persons to wear a mask indoors in public when in an area of substantial or high transmission.[24] Furthermore, CDC recommends that all individuals, including those fully vaccinated, continue to wear a well-fitted face mask in correctional and detention facilities.[25]

B. Public Health Factors Related to COVID–19

As directed by Executive Order,[26] CDC conducted a comprehensive reassessment of the October Order to determine whether the suspension of the right to introduce certain persons into the United States remains necessary in light of the current circumstances, including the evolving understanding of the epidemiology of COVID–19 variants and available mitigation measures including testing and vaccination.[27] In conducting this reassessment, CDC examined a number of public health factors, and evaluated how these factors impact POE and U.S. Border Patrol stations and the personnel and noncitizens in those facilities. CDC also scrutinized whether the potential impacts varied by category of noncitizen: SA, FMU, and UC. In carrying out its reassessment, CDC evaluated the following public health factors: (1) The manner of COVID–19 transmission, including asymptomatic and pre-symptomatic transmission; (2) the emerging variants of the SARS–CoV–2 virus; (3) the risks specific to the type of facility or congregate setting; (4) the availability of testing and vaccines and the applicability of other mitigation efforts; and (5) the impact on U.S. communities and healthcare resources. CDC views this public health reassessment as setting forth a roadmap toward the safe resumption of normal processing of arriving noncitizens, taking into account COVID–19 concerns and immigration facilities' ability to implement mitigation measures.

[16] *COVID Data Tracker,* Centers for Disease Control and Prevention, *https://covid.cdc.gov/covid-data-tracker/#datatracker-home* (last visited July 28, 2021).

[17] *United States COVID–19 Cases, Deaths, and Laboratory Testing (NAATs) by State, Territory, and Jurisdiction,* Centers for Disease Control and Prevention, *https://covid.cdc.gov/covid-data-tracker/#cases_community* (last visited July 28, 2021).

[18] Christie A, Brooks JT, Hicks LA, et al. Guidance for Implementing COVID–19 Prevention Strategies in the Context of Varying Community Transmission Levels and Vaccination Coverage. MMWR Morb Mortal Wkly Rep. ePub: 27 July 2021. DOI: *http://dx.doi.org/10.15585/mmwr.mm7030e2.*

[19] *See Global Trends, Epidemic Curve trajectory Classification,* WHO, as reported at *https://covid.cdc.gov/covid-data-tracker/#global-trends* (last visited July 28, 2021).

[20] Low/Moderate incidence describes <50 cases per 100,000 people during the past 7 days. Increasing or Decreasing incidence is based on the percentage change in the number of cases reported in the past 7 days compared to the 7 days prior to that (Increasing: >0% change, Decreasing: <0% change).

[21] *Determination that a Public Health Emergency Exists,* U.S. Department of Health and Human Services (Jan. 31, 2020), *https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx* (last visited July 21, 2021). The public health emergency determination has been subsequently renewed at 90-day intervals, most recently on July 28, 2021. *See https://www.phe.gov/emergency/news/healthactions/phe/Pages/COVID-19July2021.aspx* (last visited July 28, 2021).

[22] The President issued proclamations suspending entry into the United States of immigrants or nonimmigrants who were physically present within a number of countries during the 14-day period preceding their entry or attempted entry into the U.S. *See* Proclamation 9984 (Jan. 31, 2020); Proclamation 9992 (Feb. 28, 2020); Proclamation 10143 (Jan. 25, 2021); and Proclamation 10199 (Apr. 30, 2021). Since March 2020, Canada and Mexico have joined with the U.S. to restrict non-essential travel along land borders to prevent the introduction and spread of the virus that causes COVID–19; these restrictions are in place until at least August 21, 2021. Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the U.S. and Canada, 86 FR 38556 (July 22, 2021); Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the U.S. and Mexico, 86 FR 38554 (July 22, 2021). CDC has also issued orders to mitigate risk of further introducing and spreading SARS CoV–2 and its variants into the United States. *See* Framework for Conditional Sailing and Initial Phase COVID–19 Testing Requirements for Protection of Crew, 85 FR 70153 (Nov. 4, 2020) (outlining the process for the phased resumption of cruise ship passenger operations); Requirement for Negative Pre-Departure COVID–19 Test Result or Documentation of Recovery from COVID–19 for all Airline or Other Aircraft Passengers Arriving into the U.S. from Any Foreign Country, 86 FR 7387 (Jan. 28, 2021); and *COVID–19 Travel Recommendations by Destination,* Centers for Disease Control and Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/travelers/map-and-travel-notices.html#travel-1* (last updated July 26, 2021) (COVID–19-related travel recommendations, including 62 Level 4 Travel Health Notices for countries with very high COVID–19 rates).

[23] CDC's Order requiring the wearing of face masks by travelers while on a conveyance entering, traveling within, or departing the United States and in U.S. transportation hubs remains in place for all travelers at indoor settings on public transportation conveyances and at transportation hubs, regardless of vaccination. Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs, 86 FR 8025 (Feb. 3, 2021). *See Requirement for Face Masks on Public Transportation Conveyances and at Transportation Hubs,* Centers for Disease Control and Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/travelers/face-masks-public-transportation.html* (last updated June 10, 2021).

[24] *Supra* note 15 (CDC also recommends fully vaccinated persons consider wearing a mask regardless of transmission level if they or someone in their household is immunocompromised or at increased risk for severe disease, or if someone in their household is unvaccinated (including children currently ineligible for vaccination)); *see also infra* page 11, section 5 (discussion of ''high'' and ''substantial transmission'').

[25] *Interim Public Health Recommendations for Fully Vaccinated People,* Centers for Disease Control and Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html* (last updated May 28, 2021).

[26] Exec. Order 14010, ''Creating a Comprehensive Regional Framework To Address the Causes of Migration, To Manage Migration Throughout North and Central America, and To Provide Safe and Orderly Processing of Asylum Seekers at the United States Border,'' 86 FR 8267 (Feb. 2, 2021).

[27] CDC's reassessment of the public health situation with respect to covered noncitizens and border facilities relies upon information and data provided by DHS, CBP, and HHS' Office of Refugee Resettlement, including information regarding those entities' policies and practices.

1. Manner of COVID–19 Transmission

SARS–CoV–2, the virus that causes COVID–19, spreads mainly from person-to-person through respiratory fluids released during exhalation, such as when an infected person coughs, sneezes, or talks. Exposure to these respiratory fluids occurs in three principal ways: (1) Inhalation of very fine respiratory droplets and aerosol particles, (2) deposition of respiratory droplets and particles on exposed mucous membranes in the mouth, nose, or eye by direct splashes and sprays, and (3) touching mucous membranes with hands that have been soiled either directly by virus-containing respiratory fluids or indirectly by touching surfaces with virus on them.[28] Spread is more likely when people are in close contact with one another (within about 6 feet), especially in crowded or poorly ventilated indoor settings. Unvaccinated persons with asymptomatic and pre-symptomatic infection are significant contributors to community SARS–CoV–2 transmission and occurrence of COVID–19.[29] Asymptomatic cases are currently believed to represent roughly 30% of all COVID–19 infections and the infectiousness of asymptomatic individuals is believed to be about 75% of the infectiousness of symptomatic individuals. CDC's current best estimate is that 50% of infections are transmitted prior to symptom onset (pre-symptomatic transmission).[30] Although rare, as discussed below, breakthrough infections may occur in vaccinated individuals. Due to the variety of source of spread—transmission by asymptomatic, pre-symptomatic, symptomatic, and vaccinated individuals—testing is critical to identify those infected with COVID–19.

Among those who are not vaccinated, serious COVID–19 illness necessitating treatment occurs with greater frequency in older adults and those with certain pre-existing conditions.[31] Although children can be infected with SARS–CoV–2, get sick from COVID–19, and spread the virus to others, when compared with adults, children and adolescents who have COVID–19 are more commonly asymptomatic or have mild, non-specific symptoms. Children are less likely to develop severe illness or die from COVID–19.[32] They typically present with mild symptoms, if any, and have a good prognosis, recovering within one to two weeks after disease onset.[33]

2. Emerging Variants of the SARS–CoV–2 Virus

Like all viruses, SARS–CoV–2 constantly changes through mutation as it circulates, resulting in new virus variants over time.[34] Unchecked transmission of SARS–CoV–2 may result in increased viral mutations and the emergence of new variants. New variants of SARS–CoV–2 have emerged globally,[35] several of which have been identified as variants of concern,[36] including the Alpha, Beta, Gamma, and Delta variants. These variants of concern have evidence of an increase in transmissibility and more severe disease, which may lead to higher incidence, hospitalization, and death rates among exposed persons.[37] Furthermore, findings suggest variants may reduce levels of neutralization by antibodies generated during previous infection or vaccination, resulting in reduced effectiveness of treatments or vaccines, or increased diagnostic detection failures.[38] The ultimate concern is a variant that substantially decreases the effectiveness of available vaccines against severe or deadly disease.

Currently, the Delta variant is the predominant SARS–CoV–2 strain circulating in the United States, accounting for over 82% of cases as of July 17, 2021.[39] Of critical significance for this Order, the Delta variant has demonstrated increased levels of transmissibility among unvaccinated persons and might increase the risk of vaccine breakthrough infections in the absence of other mitigation strategies.[40] For the unvaccinated, Delta remains a formidable threat and rates of infection of the Delta variant are growing more rapidly in U.S. counties with lower vaccination rates.[41] Available evidence suggests all three vaccines currently authorized for emergency use in the United States provide significant protection against variants circulating in the United States.[42] However, a small

[28] *Scientific Brief: SARS–CoV–2 Transmission,* Centers for Disease Control and Prevention (May 7, 2021), *https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/sars-cov-2-transmission.html; Science Brief: SARS–CoV–2 and Surface (Fomite) Transmission for Indoor Community Environments,* Centers for Disease Control and Prevention (Apr. 5, 2021), *https://www.cdc.gov/coronavirus/2019-ncov/more/science-and-research/surface-transmission.html.*

[29] Moghadas SM, Fitzpatrick MC, Sah P, et al. The implications of silent transmission for the control of COVID–19 outbreaks. *Proc Natl Acad Sci U S A.* 2020;117(30):17513–17515.10.1073/pnas.2008373117, available at *https://www.ncbi.nlm.nih.gov/pubmed/32632012;* Johansson MA, Quandelacy TM, Kada S, et al. SARS–CoV–2 Transmission From People Without COVID–19 Symptoms. Johansson MA, et al. JAMA Netw Open. 2021 January4;4(1):e2035057. doi: 10.1001/jamanetworkopen.2020.35057.

[30] *COVID–19 Pandemic Planning Scenarios,* Centers for Disease Control and Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html* (last visited July 28, 2021).

[31] *People at Increased Risk and Other People Who Need to Take Extra Precautions,* Centers for Disease Control and Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/index.html* (last updated Apr. 20, 2021).

[32] *Science Brief: Transmission of SARS–CoV–2 in K–12 Schools and Early Care and Education Programs—Updated,* Centers for Disease Control and Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/transmission_k_12_schools.html* (last updated July 9, 2021).

[33] *See* Leeb RT, Price S, Sliwa S, et al. COVID–19 Trends Among School-Aged Children—United States, March 1–September 19, 2020. MMWR Morb Mortal Wkly Rep 2020;69:1410–1415. DOI: *http://dx.doi.org/10.15585/mmwr.mm6939e2;* Leidman E, Duca LM, Omura JD, Proia K, Stephens JW, Sauber-Schatz EK. COVID–19 Trends Among Persons Aged 0–24 Years—United States, March 1–December 12, 2020. MMWR Morb Mortal Wkly Rep 2021;70:88–94. DOI: *http://dx.doi.org/10.15585/mmwr.mm7003e1;* Rankin DA, Talj R, Howard LM, Halasa NB. Epidemiologic trends and characteristics of SARS–CoV–2 infections among children in the United States. Curr Opin Pediatr. 2021 Feb 1;33(1):114–121. doi: 10.1097/MOP.0000000000000971. PMID: 33278112; PMCID: PMC8011299; and Castagnoli R, Votto M, Licari A, et al. Severe Acute Respiratory Syndrome Coronavirus 2 (SARS–CoV–2) Infection in Children and Adolescents: A Systematic Review. JAMA Pediatr. 2020;174(9):882–889. doi:10.1001/jamapediatrics.2020.1467.

[34] *About Variants of the Virus that Causes COVID–19,* Centers for Disease Control and Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/transmission/variant.html* (last updated Apr. 2, 2021).

[35] Abdool Karim SS, de Oliveira T. New SARS–CoV–2 Variants—Clinical, Public Health, and Vaccine Implications [published online ahead of print, 2021 Mar 24]. *N Engl J Med.* 2021;10.1056/NEJMc2100362. doi:10.1056/NEJMc2100362.

[36] *Id.*

[37] Dougherty K, Mannell M, Naqvi O, Matson D, Stone J. SARS–CoV–2 B.1.617.2 (Delta) Variant COVID–19 Outbreak Associated with a Gymnastics Facility—Oklahoma, April–May 2021. MMWR Morb Mortal Wkly Rep 2021;70:1004–1007. DOI: *http://dx.doi.org/10.15585/mmwr.mm7028e2* (describing a B.1.617.2 (Delta) Variant COVID–19 outbreak associated with a gymnastics facility and finding that the Delta variant is highly transmissible in indoor sports settings and households, which might lead to increased incidence rates).

[38] *SARS–CoV–2 Variant Classifications and Definitions,* Centers for Disease Control and Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/variants/variant-info.html#Concern* (last updated June 29, 2021).

[39] *Variant Proportions,* Centers for Disease Control and Prevention, *https://covid.cdc.gov/covid-data-tracker/#variant-proportions* (citing data for the two-week interval ending July 17, 2021).

[40] *About Variants of the Virus that Causes COVID–19,* Centers for Disease Control and Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/variants/variant.html* (last updated June 28, 2021).

[41] COVID Data Tracker Weekly Review, Interpretive Summary for July 23, 2021, Centers for Disease Control and Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/index.html* (attributing rising numbers of COVID–19 cases in nearly 90% of U.S. jurisdictions to the rapid spread of the Delta variant).

[42] *Science Brief: COVID–19 Vaccines and Vaccination,* Centers for Disease Control and Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/fully-vaccinated-people.html* (last updated May 27, 2021). Other vaccines, particularly the one manufactured by AstraZeneca, show reduced efficacy against

proportion of people who are fully vaccinated may become infected with the Delta variant (known as breakthrough infection); emerging evidence suggests that fully vaccinated persons who do become infected with the Delta variant are at risk for transmitting it to others.[43]

CDC continues to monitor the situation and may adapt recommendations based on the epidemiology of variants of concern. Given the transmissibility of variant strains and the continued emergence of new variants, ongoing monitoring of vaccine effectiveness is needed to identify mutations that could render vaccines most commonly used in the United States less effective against more transmissible variants.[44]

3. Risks of COVID–19 Transmission Specific to Congregate Settings

Given the manner of transmission, including asymptomatic or pre-symptomatic transmission, the risk of spreading COVID–19 is particularly pronounced among those who are unvaccinated, partially vaccinated, or vaccinated with less effective vaccines.[45] This risk is acutely present in congregate settings, where a number of people reside, meet, or gather in close proximity for either a limited or extended period of time.[46] Facilities must often carefully weigh the risks of increased transmission not only in the facilities, but also in the local community, due to secondary transmission. These congregate facilities must also consider individual facility and community characteristics (*e.g.,* ability to maintain physical distancing, compliance with universal mask-use policies, ability to properly ventilate, proportion of staff and occupants vaccinated, numbers of those who are at increased risk for severe illness from COVID–19, the availability of resources for broad-based vaccination, testing, and outbreak response, and level of community transmission).[47]

Congregate settings, particularly detention facilities with limited ability to provide adequate physical distancing and cohorting, have a heightened risk of COVID–19 outbreaks.[48] CDC has long recognized the risks specific to such settings, including homeless shelters, detention centers, schools, and workplaces and has provided a number of guidance documents to address the concerns in such spaces. Specifically, CDC developed interim guidance for law enforcement agencies that have custodial authority for detained populations, including civil and pre-trial detention settings. Among the recommendations are physical distancing strategies, isolation of individuals with confirmed or suspected COVID–19, quarantine of close contacts, cohorting of individuals when space is limited, testing, healthcare evaluations for individuals with suspected COVID–19, clinical care as needed for individuals with confirmed or suspected COVID–19, and addressing specific considerations for people who are at increased risk for severe illness.[49]

Vaccine coverage in congregate settings varies and infection risk is greater where there is sustained community transmission.[50] In light of this, CDC strongly recommends vaccination against COVID–19 for everyone who is eligible, including people who are incarcerated or detained and staff at correctional and detention facilities.[51] CDC is discussing additional guidance with DHS, highlighting the key metrics to consider before modifying COVID–19 prevention and mitigation measures in facilities that hold or detain migrants.[52]

4. Availability of Testing, Vaccines, and Other Mitigation Measures

The potential for asymptomatic and pre-symptomatic transmission makes testing an essential part of COVID–19 mitigation protocols. With the additional testing capacity available through antigen tests, rapid testing can be implemented to identify infected persons so they can be isolated until they no longer pose a risk of spreading infections and their close contacts can be identified and quarantined.[53] Testing is especially important in congregate settings where even a single asymptomatic case can trigger an outbreak that may quickly exceed a facility's capacity to isolate and quarantine residents. Furthermore, if personnel are infected or exposed, the number of available staff members may be reduced, further stressing facility operations. Testing facility residents and personnel can help facilitate prompt mitigation actions.

COVID–19 vaccines are now widely available in the United States, and vaccination is recommended for all people 12 years of age and up. Three COVID–19 vaccines are currently authorized by the U.S. Food and Drug Administration (FDA) for emergency use: Two mRNA vaccines (produced by Pfizer-BioNTech and Moderna) and one viral vector vaccine (produced by

infection with certain variants but may still protect against severe disease; at the time of the issuance of this Order, the FDA has not authorized the AstraZeneca COVID–19 vaccine for use in the United States.

[43] *Supra* note 15.

[44] *See About Variants of the Virus that Causes COVID–19, supra* note 37.

[45] Vaccines with effectiveness of less than 50% against wildtype strains of COVID–19 are considered less effective.

[46] Notably, COVID–19 has disproportionately affected persons in congregate settings and high-density workplaces. Studies conducted prior to the availability of vaccines showed that a single introduction of SARS–CoV–2 into a facility can result in a widespread outbreak. Lehnertz NB, Wang X, Garfin J, Taylor J, Zipprich J, VonBank B, et al. Transmission Dynamics of Severe Acute Respiratory Syndrome Coronavirus 2 in High-Density Settings, Minnesota, USA, March–June 2020. Emerg Infect Dis. 2021;27(8):2052–2063. *https://doi.org/10.3201/eid2708.204838.* Whole genome sequencing of samples taken following an outbreak at a correctional facility demonstrated that 92.2% of the samples taken from patients were genetically related, indicating that a single case had likely led to the infection of 48 individuals. Similarly, phylogenetic analysis established that 29.6% of cases from an outbreak at a second correctional facility were closely related and genetically identical, indicating that the index case had led to the infection of approximately 60 others. DellaGrotta AL, Molina C, et al. *Limited Secondary Transmission of SARS–CoV–2 in Child Care Programs—Rhode Island, June 1–July 31, 2020.* MMWR Morb Mortal Wkly Rep 2020;69:1170–1172. DOI: *http://dx.doi.org/10.15585/mmwr.mm6934e2.*

[47] *See Recommendations for Quarantine Duration in Correctional Facilities,* Centers for Disease Control and Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/community/quarantine-duration-correctional-facilities.html* (last visited July 28, 2021).

[48] Since March 31, 2020, the U.S. Federal Bureau of Prisons and state departments of corrections have together recorded 416,854 COVID–19 cases among residents and 108,945 cases among staff in correctional and detention facilities, resulting in 2,911 deaths. *Confirmed COVID–19 Cases and Deaths in U.S. Correctional and Detention Facilities by State,* Centers for Disease Control and Prevention, *https://covid.cdc.gov/covid-data-tracker/#correctional-facilities* (last visited July 28, 2021).

[49] *See* Guidance for Correctional & Detention Facilities, Centers for Disease Control and Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html* (last updated June 9, 2021).

[50] Falk A, Benda A, Falk P, Steffen S, Wallace Z, Høeg TB. *COVID–19 Cases and Transmission in 17 K–12 Schools—Wood County, Wisconsin, August 31–November 29, 2020.* MMWR Morb Mortal Wkly Rep 2021;70:136–140. DOI: *http://dx.doi.org/10.15585/mmwr.mm7004e3. See also* Link-Gelles R,

[51] *COVID–19 Vaccine FAQs in Correctional and Detention Centers,* Centers for Disease Control and Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/vaccine-faqs.html* (last updated June 1, 2021).

[52] *See* CDC memo to DHS ''Considerations for modifying COVID–19 prevention and mitigation measures in Department of Homeland Security migrant holding facilities in response to declining transmission,'' Centers for Disease Control and Prevention (last updated June 11, 2021).

[53] *See* COVID–19 Testing and Diagnostics Working Group (TDWG). U.S. Department of Health and Human Services, *https://www.hhs.gov/coronavirus/testing/testing-diagnostics-working-group/index.html* (last visited July 28, 2021) (defining the role of the COVID–19 TDWG, which develops testing-related guidance and provides targeted investments to expand the available testing supply and maximize testing capacity).

Johnson & Johnson/Janssen), each of which has been determined to be safe and effective against COVID–19. As of July 28, 2021, over 163 million people in the United States (57.6% of the population 12 years or older) have been fully vaccinated and over 189 million people in the United States (66.8% of the population 12 years or older) have received at least one dose.[54] After substantial vaccine uptake in the first months of 2021, however, vaccination uptake has plateaued, particularly in those under the age of 65 years.[55] The combination of reduced vaccine uptake and the extreme transmissibility of the Delta variant has resulted in rising numbers of COVID–19 cases, primarily and disproportionately affecting the unvaccinated population.

The availability of COVID–19 vaccines is rising globally but still dwarfed by the rates of vaccination in the United States and a handful of other countries.[56] Countries of origin for the majority of incoming covered noncitizens have markedly lower vaccination rates.[57] Given this, the increased movement of typically unvaccinated covered noncitizens into the United States presents a heightened risk of morbidity and mortality to this population due to the congregate holding facilities at the border and the practical constraints on implementation of mitigation measures in such facilities. Outbreaks in these settings increase the serious danger of further introduction, transmission, and spread of COVID–19 and variants into the country.

CDC is aware of a rising number of breakthrough SARS–CoV–2 infections[58] in vaccinated individuals; even without variants of concern, more vaccine breakthroughs are to be expected due to the rising number of vaccinated individuals. While the vaccines currently authorized by the FDA are successful in mitigating severe illness from the highly transmissible Delta variant, infection and even mild to moderate illness has been documented in a small percentage of vaccinated persons.[59] The emergence of these more transmissible variants increases the urgency to expand vaccination coverage for everyone and especially those in densely populated congregate settings.[60] Public health agencies and other organizations must collaboratively monitor the status of the pandemic in their communities. As widespread vaccination efforts continue, ongoing use of the full panoply of mitigation measures is nevertheless especially important in congregate settings and remains key to slowing introduction, transmission, and spread of COVID–19.

5. Impact on U.S. Communities and Healthcare Resources

COVID–19 cases are on the rise in nearly 90% of U.S. jurisdictions, and multiple outbreaks are occurring in parts of the country that have low vaccination coverage. A person's risk for SARS–CoV–2 infection is directly related to the risk for exposure to infectious persons, which is largely determined by the extent of SARS–CoV–2 circulation in the surrounding community. Emerging evidence regarding the Delta variant finds that it is more than two times as transmissible as the original strains of SARS–CoV–2 circulating at the start of the pandemic. In light of this, CDC recommends assessing the level of community transmission using, at a minimum, two metrics: New COVID–19 cases per 100,000 persons in the last 7 days and percentage of positive SARS–CoV–2 diagnostic nucleic acid amplification tests in the last 7 days. For each of these metrics, CDC classifies transmission values as low, moderate, substantial, or high. At the time of this Order's issuance, over 70% of the U.S. counties along the U.S.-Mexico border were classified as experiencing high or substantial levels of community transmission.[61] In areas of substantial or high transmission, CDC recommends community leaders encourage vaccination and universal masking in indoor public spaces in addition to other layered prevention strategies to prevent further spread.

Between March and June 2021, rates of hospitalization due to COVID–19 decreased dramatically, easing long endured pressures on the U.S. healthcare system. However, in July 2021, with the rise of the Delta variant, the seven-day average for new hospital admissions in the United States increased 35.8% over the prior seven-day period.[62] Rates of hospitalization are rising most sharply in areas with low vaccination coverage.[63] CDC recommends continuous monitoring of the availability of staffed inpatient and intensive care unit beds, as data on usage of clinical care resources to manage patients with COVID–19 reflect underlying community disease incidence. This information can signal when urgent implementation of layered prevention strategies might be necessary to prevent overloading local and regional health care systems. Strains on

[54] *COVID–19 Vaccinations in the United States,* Centers for Disease Control and Prevention, *https://covid.cdc.gov/covid-data-tracker/#vaccinations* (last updated July 28, 2021).

[55] Diesel J, Sterrett N, Dasgupta S, et al. COVID–19 Vaccination Coverage Among Adults—United States, December 14, 2020–May 22, 2021. MMWR Morb Mortal Wkly Rep 2021;70: 922–927. DOI: *http://dx.doi.org/10.15585/mmwr.mm7025e1.* The study found that the lowest vaccination coverage and the intent to be vaccinated among adults aged 18–24 years, non-Hispanic Black adults, and individuals with less education, no insurance, and lower household incomes. Concerns about vaccine safety and effectiveness were commonly cited barriers to vaccination. *See also supra* note 15 (finding that vaccine uptake has slowed nationally with wide variation in coverage by state (range = 33.9%–67.2%) and by county (range = 8.8%–89.0%)).

[56] *See* ''PAHO Director calls for fair and broad access to COVID–19 vaccines for Latin America and the Caribbean,'' Pan American Health Organization, *https://www.paho.org/en/news/7-7-2021-paho-director-calls-fair-and-broad-access-covid-19-vaccines-latin-america-and* (July 7, 2021) (noting the discrepancies in vaccine availability coverage among North, Central, and South American countries).

[57] Thus far in 2021, Ecuador, El Salvador, Guatemala, Honduras, and Mexico constitute the top five countries of origin for covered noncitizens. Rates of vaccination for each country are as follows: Ecuador: 11% fully vaccinated, 30% only partly vaccinated; El Salvador: 22% fully vaccinated, 17% only partly vaccinated; Guatemala: 1.6% fully vaccinated, 5.3% only partly vaccinated; Honduras: 1.8% fully vaccinated, 12% only partly vaccinated; Mexico: 18% fully vaccinated, 14% only partly vaccinated, *https://ourworldindata.org/covid-vaccinations* (last visited July 24, 2021).

[58] A vaccine breakthrough infection is defined as the detection of SARS–CoV–2 RNA or antigen in a respiratory specimen collected from a person ≥14 days after receipt of all recommended doses of an FDA-authorized COVID–19 vaccine. COVID–19 Vaccine Breakthrough Infections Reported to CDC—United States, January 1–April 30, 2021. MMWR Morb Mortal Wkly Rep 2021;70:792–793. DOI: *http://dx.doi.org/10.15585/mmwr.mm7021e3.*

[59] *COVID–19 Vaccine Breakthrough Case Investigation and Reporting,* Centers for Disease Control and Prevention, *https://www.cdc.gov/vaccines/covid-19/health-departments/breakthrough-cases.html* (last updated July 15, 2021).

[60] *Supra* at note 55.

[61] Of the 22 U.S. counties along the U.S.-Mexico border, 13 counties are experiencing high levels of community transmission (San Diego County, CA; Hidalgo County, NM; Presidio County, TX; Brewster County, TX; Terrell County, TX; Val Verde County, TX; Kinney County, TX; Maverick County, TX; Webb County, TX; Zapata County, TX; Starr County, TX; Hidalgo County, TX; and Cameron County, TX) and four counties are experiencing substantial levels of community transmission (Imperial County, CA; Pima County, AZ; Santa Cruz County, AZ; and Luna County, NM;). Five counties are experiencing moderate levels of community transmission (Yuma County, AZ; Cochise County, AZ; Dona Ana County, NM; El Paso County, TX; and Hudspeth County, TX). No counties along the border are experiencing low levels of community transmission. *COVID–19 Integrated County View,* Centers for Disease Control and Prevention, *https://covid.cdc.gov/covid-data-tracker/#county-view* (last updated July 28, 2021).

[62] COVID Data Tracker Weekly Review, Interpretive Summary for July 16, 2021, Centers for Disease Control and Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/past-reports/07162021.html* (last visited July 28, 2021).

[63] COVID Data Tracker Weekly Review, Interpretive Summary for July 9, 2021, Centers for Disease Control and Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/past-reports/07092021.html.*

critical care capacity can increase COVID–19 mortality while decreasing the availability and use of health care resources for non-COVID–19 related medical care.[64] Increased hospital admissions are forecasted in the coming weeks as the Delta variant continues to predominate.[65]

The rapid spread of the highly transmissible Delta variant is leading to worrisome trends in healthcare and community resources. Signs of stress are already present in the southern regions of the United States.[66] Ultimately, the flow of migration directly impacts not only border communities and regions, but also destination communities and the healthcare resources of both. In light of this, the totality of the U.S. community transmission, health system capacity, and public health capacity, as well as local capacity to implement mitigation protocols, are important considerations when reassessing the need for this Order.[67]

II. Public Health Reassessment

A. Immigration Processing and Public Health Impacts

Noncitizens arriving in the United States who lack proper travel documents, whose entry is otherwise contrary to law, or who are apprehended at or near the border seeking to unlawfully enter the United States between POE are normally subject to initial immigration processing by CBP in POE facilities and U.S. Border Patrol stations. Absent CDC's issuance of an order under 42 U.S.C. 265 directing otherwise, immigration processing takes place pursuant to Title 8 of the U.S. Code. Although some number of inadmissible noncitizens present at POE, the vast majority are encountered by CBP between POE.[68] Upon such encounters, Border Patrol agents conduct an initial field assessment and transport the individuals to a CBP facility for intake processing.[69]

CBP facilities are designed to provide this short-term intake processing and are thus space-constrained.[70] While undergoing intake processing under Title 8 at CBP facilities, noncitizens are regularly held in close proximity to one another anywhere from several hours to several days. Depending on the outcome of intake processing, a noncitizen is generally referred to the DHS' Immigration and Customs Enforcement (ICE), where they are often subject to longer-term detention.[71] [72]

Compared to CBP facilities, ICE facilities have space allocations similar to traditional long-term correctional facilities. Still, during migratory surges, capacity constraints hinder CBP and ICE operations and facilities alike. If downstream ICE operations and facilities reach capacity limits, ICE may be unable to take custody of additional noncitizens in a timely manner. When this movement of noncitizens from CBP to ICE custody is impeded or delayed, noncitizens may remain in CBP's densely populated, short-term holding facilities for much longer periods. Of note, the United States is currently experiencing such a migratory surge of noncitizens attempting to enter the country at and between POE at the southern border.[73] DHS has already recorded more encounters this fiscal year to date than the approximate 977,000 encounters in the whole of FY 2019.[74]

CBP has implemented a variety of mitigation efforts to prevent the spread of COVID–19 in POE and U.S. Border Patrol facilities based on the infection prevention strategy referred to as the hierarchy of controls.[75] CBP has invested in engineering upgrades, such as installing plexiglass dividers in facilities where physical distancing is not possible and enhancing ventilation systems. All CBP facilities adhere to CDC guidance for cleaning and disinfection. Surgical masks are provided to all persons in custody and are changed at least daily and if or when they become wet or soiled. Personal protective equipment (PPE) and guidance are regularly provided to CBP personnel. Recognizing the value of vaccination, CBP is encouraging vaccination among its workforce. All noncitizens brought into CBP custody are subject to health intake interviews, including COVID–19 screening questions and temperature checks. If a noncitizen in custody displays symptoms of COVID–19 or has a known exposure, CBP facilitates referral to the local healthcare system for testing. Finally, in the event CBP decides to release a noncitizen prior to removal proceedings, the agency has coordinated with local governments and non-governmental organizations to arrange COVID–19 testing at release.[76]

In addition to these mitigation measures, enhanced physical distancing and cohorting remain key to preventing transmission and spread of COVID–19, particularly in congregate settings. To address this, as the pandemic emerged, CBP greatly reduced capacity in their holding facilities. While U.S. Border Patrol facilities along the southern border currently have a non-pandemic total holding capacity of 14,553 individuals, implementation of mitigation measures led to a 50–75% reduction in holding capacity depending on the design of a given facility, resulting in COVID-constrained holding capacity of 4,706.[77] However, the current surge has caused CBP to exceed COVID-constrained capacity and routinely exceed its non-COVID capacity.[78] From July 3 to July 24, 2021,

[64] *Supra* note 15.

[65] COVID–19 Forecasts: Hospitalizations, Centers for Disease Control and Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/science/forecasting/hospitalizations-forecasts.html* (last updated July 21, 2021).

[66] *See* COVID Data Tracker: New Hospital Admissions, *https://covid.cdc.gov/covid-data-tracker/#new-hospital-admissions* (last updated July 22, 2021) (showing HHS Regions 4, 6, and 9, encompassing all southern states, experiencing increased rates of new admissions of COVID–19-confirmed patients).

[67] *See Implementation of Mitigation Strategies for Communities with Local COVID–19 Transmission,* Centers for Disease Control and Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/community/community-mitigation.html* (last visited May 6, 2021).

[68] Fiscal year to date, 96% (1,076,242 of 1,119,204) of encounters of noncitizens occurred between POE.

[69] CBP facilities include POE, U.S. Border Patrol stations, and facilities managed by the Office of Field Operations.

[70] CBP facilities were designed for the immediate processing of persons and are statutorily designated as short-term (less than 72 hours) holding facilities. 6 U.S.C. 211(m).

[71] FMU transferred to ICE custody are generally held at a Family Staging Center (FSC). Following intake processing, UC are referred to the Office of Refugee Resettlement (ORR) within HHS' Administration for Children and Families (ACF) for care.

[72] While CBP policies regarding transfer and release decisions are the same across the Southwest Border, implementation varies based on local CBP capacity, and ICE capacity.

[73] According to data from DHS, encounters at the southern border have been rising since April 2020 due to several factors, including ongoing violence, insecurity, and famine in the Northern Triangle countries of Central America (El Salvador, Honduras, Guatemala).

[74] *Southwest Land Border Encounters,* U.S. Customs and Border Protection, available at *https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters* (last visited July 28, 2021).

[75] *Hierarchy of Controls,* Centers for Disease Control and Prevention, available at *https://www.cdc.gov/niosh/topics/hierarchy/default.html* (last visited July 6, 2021). The hierarchy of controls is used as a means of determining how to implement feasible and effective control solutions. The hierarchy is outlined as: (1) Elimination (physically remove the hazard); (2) Substitution (replace the hazard); (3) Engineering Controls (isolate people from the hazard); (4) Administrative Controls (change the way people work); and (5) PPE (protect people with Personal Protective Equipment).

[76] This is also true of ICE facilities.

[77] Similarly, the operational holding capacity for SA in ICE facilities was reduced by 30% from a regular total capacity of 56,888 beds to 39,821 beds.

[78] Non-COVID–19 holding capacity was exceeded as recently as July 25, 2021.

CBP encountered an average of 3,573 SA and 2,479 FMU daily, over a 21-day period, even with the CDC Order in place. This extreme population density and the resulting increased time spent in custody by noncitizens presents a serious risk of increased COVID–19 transmission in CBP facilities.

CBP faces unique challenges in implementing certain COVID–19 mitigation measures. All individuals encountered by U.S. Border Patrol must be processed in CBP facilities. Not only does this involve close and often continuing contact between CBP personnel and noncitizens, but CBP is further constrained by requirements separate noncitizens within its holding facilities according to specific permutations.[79] These cohorting requirements significantly complicate CBP's ability to address COVID–19-related risks, as CBP facility capacity to accommodate COVID–19 mitigation protocols may not always align with the makeup of the incoming population of noncitizens and the categorical separations required of DHS.

Immigration Processing Under Title 8 of the U.S. Code

The vast majority of noncitizens attempting to enter the United States without proper travel documents are SA; SA account for 68% of overall CBP encounters this fiscal year as of July 26, 2021. Under normal Title 8 immigration processes, SA are transferred to ICE custody pending removal proceedings. As noted above, absent expulsions directed by an order under 42 U.S.C. 265, SA presenting at POE or attempting entry between POE would be processed and held in CBP facilities while awaiting transfer to ICE. Generally, CBP only releases SA into U.S. communities as a last resort, due to severe overcrowding and when all possible detention options have been explored.

A smaller percentage, 23%, of noncitizens encountered by CBP are members of an FMU.[80] As with SA, CBP has limited capacity to hold FMU. Under Title 8, due to court-ordered restrictions that largely prohibit the long-term detention of families, FMU are generally released from DHS custody pending removal proceedings. Prior to release, some FMU are transferred from CBP custody to Family Staging Centers (FSC) operated by ICE. Only a limited number of FMU may be held in an FSC, and time in custody for an FMU is generally about 2–3 days before being released. FSC capacity is further limited by COVID–19 mitigation protocols.[81]

Releasing FMU to communities necessitates robust testing, vaccination where possible, and careful attention to consequence management (*e.g.,* facilities for isolation and quarantine). DHS has partnered with state and local agencies and non-governmental organizations to facilitate COVID–19 testing of FMU upon release from CBP custody. Pursuant to these arrangements, CBP generally transports FMU to release locations where partner agencies and organizations are on-site to provide testing and facilitate consequence management. Although the implementing partners and their capacities (including for consequence management such as housing) vary, the objectives are constant. These resources, however, are limited. They are already stretched thin, and certainly not available for all FMU who would be processed under Title 8 in the absence of an order issued under 42 U.S.C. 265. DHS has committed to supporting and, where possible, expanding these efforts, including exploring the incorporation of vaccination into this model. CDC strongly supports DHS efforts that include broad-based testing and vaccination.

Immigration Processing With an Order Under 42 U.S.C. 265

Following the issuance of the March and October Orders, covered noncitizens apprehended at or near U.S. borders, regardless of their country of origin, generally were expelled to Mexico or Canada, whichever they entered from, via the nearest POE, or to their country of origin. Where possible, SA and FMU eligible for expulsion based on the March and October Orders have been processed pursuant to the Title 42 authority, unless a case-by-case exception was made by DHS.[82]

Even with the March and October Orders in place, a significant percentage of FMU were unable to be expelled pursuant to the order, given a range of factors, including, most notably, restrictions imposed by foreign governments.[83] For example, the Mexican government has placed certain nationality- and demographic-specific restrictions on the individuals it will accept for return via the Title 42 expulsion process. With limited exceptions, the Mexican government will only accept the return of Mexican and Northern Triangle nationals. Moreover, along sections of the border, Mexican officials refuse to accept the return of any non-Mexican family with children under the age of seven, greatly reducing DHS' ability to expel FMU. In addition, many countries impose travel requirements, including COVID–19 testing, consular interviews, and identity verification that can delay repatriation. These added requirements often make prompt expulsion a practical impossibility. Conversely, DHS continues to be able to process the majority of SA under Title 42.[84] In those cases where Title 42 processing is not possible, SA and FMU are instead processed pursuant to Title 8. Processing noncitizens and issuing a Notice to Appear under Title 8 processes takes approximately an hour and a half to two hours per person. Conversely, processing an individual for expulsion under the CDC order takes roughly 15 minutes and generally happens outdoors.

The March and October Orders permitted noncitizens to be promptly returned to their country of origin, rather than being transferred to ICE custody or released into the United States, resulting in noncitizens spending shorter amounts of time in custody at CBP facilities. However, as the number of noncitizens attempting to enter the United States has surged and as individuals cannot be expelled pursuant to Title 42 given the restrictions in place, the time in custody at CBP facilities has increased for SA and FMU, even with the October Order in place. As of July 29, 2021, the current average time in custody at CBP facilities for SA

[79] For example, criminal cases must be held separately from administrative cases, SA must be separated by gender identity, FMU and UC must be separated from SA, and all vulnerable individuals must be protected from harm.

[80] Thus far this fiscal year, as of July 26, 2021.

[81] The total capacity for these FSCs is 3,230. However, due to COVID–19 mitigation protocols and family composition limitations, current operational capacity for the FSCs is approximately 2,400. In July 2021, due to an influx of single adults at the SWB, ICE ceased intake of family units at one of the FSCs and began to transition the facility to hold single adults. With this transition, the remaining COVID-limited FSC capacity for family units is approximately 1,800. Additionally, ICE has procured 1,200 additional beds at Emergency Family Staging Centers (EFSCs); this bed space is not limited by family composition or COVID–19.

[82] Some countries have put in place limitations that make expulsion pursuant to Title 42 inapplicable. The October Order excepted covered noncitizens ''who must test negative for COVID–19 before they are expelled to their home country'' and several countries refuse to accept the return of SA and FMU and other individuals unless DHS first secures a negative test result for each individual to be returned. These noncitizens are thus not covered by the prior Order and thus cannot be expelled pursuant to Title 42. See 85 FR at 65807.

[83] Only 33% of FMU encountered fiscal year to date have been expelled under Title 42 and this percentage has fallen over time. In June 2021, only 14% of FMU were expelled under Title 42, an average of approximately 300 per day.

[84] Fiscal year to date, 89% of SA have been expelled under Title 42. This percentage has fallen slightly as the constraints on expelling individuals have increased. In June 2021, 82% of SA were expelled under Title 42, an average of over 3,000 per day.

not subject to expulsion under the October Order is 50 hours. FMU currently spend an average of 62 hours in CBP custody prior to release or transfer to ICE. If the CDC Order were not in place, both SA and FMU time in custody would likely increase significantly.

B. Public Health Assessment of Single Adults and Family Units

Implementation of CDC's March and October Orders significantly reduced the length of time covered noncitizen SA and FMU are held in congregate settings at POE and U.S. Border Patrol stations, as well as in the ICE facilities that subsequently hold noncitizens.[85] By reducing congestion in these facilities, the Orders have helped lessen the introduction, transmission, and spread of COVID–19 among border facilities and into the United States while also decreasing the risk of exposure to COVID–19 for DHS personnel and others in the facilities. Implementation of the Orders has mitigated the potential erosion of DHS operational capacity due to COVID–19 outbreaks. The reduction in the number of SA and FMU held in these congregate settings continues to be a necessary mitigation measure as DHS moves towards the resumption of normal border operations.

The availability of testing, vaccination, and other mitigation measures [86] at migrant holding facilities must also be considered. While downstream ICE facilities may have greater ability to provide these measures, CBP cannot appropriately execute consequence management measures to minimize spread or transmission of COVID–19 within its facilities. Space constraints, for example, preclude implementation of cohorting and consequence management such as quarantine and isolation. Covered noncitizens housed in congregate settings who may be infected with COVID–19 may ultimately increase community transmission rates in the United States, especially among susceptible populations (*i.e.,* non-immune, under-vaccinated, and non-vaccinated persons). Mitigation measures, especially testing and vaccination, must be considered for the noncitizens being held, as well as for facility personnel. On-site COVID–19 testing for noncitizens at CBP holding facilities is very limited and the majority of testing takes place off-site. For example, if a noncitizen is transported to a community healthcare facility for medical care, testing is provided based on local protocols. Once transferred to ICE custody, testing for SA and FMU is more widely available.

Although COVID–19-related healthcare resources have substantially improved since the October Order was issued, emerging variants and the potential for a future vaccine-resistant variant mean the possible impacts on U.S. communities and local healthcare resources in the event of a COVID–19 outbreak at CBP facilities cannot be ignored. The introduction, transmission, and spread of SARS–CoV–2—including its variants—among covered noncitizens during processing and holding at congregate CBP settings remain a significant concern to the noncitizens, CBP personnel, as well as the community at large in light of transmission to unvaccinated individuals and the potential for breakthrough cases. Of particular note, POE and U.S. Border Patrol stations are ill-equipped to manage an outbreak and these facilities are heavily reliant on local healthcare systems for the provision of more extensive medical services to noncitizens.[87] Transfers to local healthcare systems for care could strain local or regional healthcare resources. Reliance on healthcare resources in border and destination communities may increase the pressure on the U.S. healthcare system and supply chain during the current public health emergency.[88] Of note, hospitalization rates are once again soaring nationally as the Delta variant spreads and the vaccination rate of the public lags. Ensuring the continued availability of healthcare resources is a critical component of the federal government's overall public health response to COVID–19.

Given the nature of COVID–19, there is no zero-risk scenario, particularly in congregate settings and with variants as transmissible as that of Delta in high circulation in the country. The ongoing pandemic presents complex and dynamic challenges relating to public health that limit DHS' ability to process noncitizens safely under normal Title 8 procedures. Processing a noncitizen under Title 8 can take up to eight times as long as processing a noncitizen under Title 42. Importantly, longer processing times result in longer exposure times to a heightened risk of COVID–19 transmission for both noncitizens and CBP personnel. Amid the ongoing migrant surge, both the COVID–19-reduced capacity and higher non-COVID holding capacity limits have been exceeded in CBP facilities. Complete termination of any order under 42 U.S.C. 265 would increase the number of noncitizens requiring processing under Title 8, resulting in severe overcrowding and a high risk of COVID–19 transmission among those held in the facilities and the CBP workforce, ultimately burdening the local healthcare system.[89]

All of this is of particular concern as the Delta variant continues to drive an increase in COVID–19 cases. While scientists learn more about Delta and other emerging variants, rigorous and increased compliance with public health mitigation strategies is essential to protect public health.[90] Reducing the further introduction, transmission, and spread of these variants and future variants of concern into the United States is key to defeating COVID–19. CDC has concluded that SA and FMU should continue to be subject to the Order at this time pending further improvements in the public health situation.

C. Comparison to Unaccompanied Noncitizen Children

As discussed in the July Exception, UC are differently situated than SA and

[85] For example, when processing noncitizens under Title 8, prior to referral to ICE or release into the community, CBP generally issues the noncitizen a ''Notice to Appear'' (also called an I–862), which is a charging document that initiates removal proceedings against the noncitizen and may include a court date or direct the noncitizen to report to an ICE office to receive a court date.

[86] *See Interim Guidance on Management of Coronavirus Disease 2019 (COVID–19) in Correctional and Detention Facilities,* Centers for Disease Control and Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html#correctional-facilities* (last visited July 28, 2021).

[87] *See* CBP Directive No. 2210–004, U.S. Customs and Border Protection, *https://www.cbp.gov/sites/default/files/assets/documents/2019-Dec/CBP_Final_Medical_Directive_123019.pdf* (Dec. 30, 2019). Many of the U.S. Border Patrol stations and POE facilities are located in remote areas and do not have ready access to local healthcare systems (which typically serve small, rural populations and have limited resources). 85 FR 56424, 56433. *See also* Abubakar I, Aldridge RW, Devakumar D, et al. The UCL-Lancet Commission on Migration and Health: the health of a world on the move. *Lancet.* 2018;392(10164):2606–2654. doi:10.1016/S0140–6736(18)32114–7.

[88] *See COVID–19 State Profile Report—Combined Set, HealthData.gov, https://healthdata.gov/Community/COVID-19-State-Profile-Report-Combined-Set/5mth-2h7d* (last updated July 28, 2021).

[89] Throughout the course of the COVID–19 pandemic, CDC has observed numerous outbreaks in similar congregate settings. *See FAQs for Correctional and Detention Facilities,* Centers for Disease Control and Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/faq.html* (last visited Apr. 15, 2021).

[90] *About Variants of the Virus that Causes COVID–19,* Centers for Disease Control and Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/transmission/variant.html* (last updated Apr. 2, 2021).

FMU. The Government has greater ability to care for UC while implementing appropriate COVID–19 mitigation measures. ORR has established a robust network of care facilities that provide testing and medical care and institute COVID–19 mitigation protocols, including vaccination for personnel and eligible UC. In light of these considerations, there is very low likelihood that processing UC in accordance with existing Title 8 procedures will result in undue strain on the U.S. healthcare system or healthcare resources. Moreover, UC released to a vetted sponsor or placed in a temporary or licensed ORR shelter do not pose a significant level of risk for COVID–19 spread into the community. UC are released only after having undergone testing, quarantine and/or isolation, and vaccination when possible, and their sponsors are provided with appropriate medical and public health direction. CDC thus finds that, at this time,[91] there is appropriate infrastructure in place to protect the children, caregivers, and local and destination communities from elevated risk of COVID–19 transmission. CDC believes the COVID–19-related public health concerns associated with UC introduction can be adequately addressed without UC being subject to this Order. As outlined in the July Exception and incorporated herein, CDC is fully excepting UC from this Order. The number of UC entering the United States is smaller than both the number of SA [92] and of FMU. Whereas UC can be excepted from the Order without posing a significant public health risk, the same is not true of SA and FMU, as described above.

D. Summary of Findings

Upon review of the various public health factors outlined above and in consideration of the circumstances at DHS facilities, it is CDC's assessment that suspending the right to introduce covered noncitizen SA and FMU who would otherwise be held at POE and U.S. Border Patrol stations remains necessary as the United States continues to combat the COVID–19 public health emergency. In making this determination, CDC has considered various possible alternatives (including but not limited to terminating the application of an order under 42 U.S.C. 265 for some or all SA and FMU, modifying the availability of exceptions for individual SA and FMU in an order under 42 U.S.C. 265, and reissuing an order under 42 U.S.C. 265 for some or all UC); but for the reasons discussed herein, CDC finds that the continued suspension of the right to introduce SA and FMU under the terms set forth herein, combined with the exception for UC, is appropriate at this time. This temporary suspension pending further improvements in the public health situation and greater ability to implement COVID–19 mitigation measures in migrant holding facilities will slow the influx of noncitizens into environments at higher risk for COVID–19 transmission and spread.

DHS has indicated a commitment to restoring border operations in a manner that complies with applicable COVID–19 mitigation protocols while also accounting for other public health and humanitarian concerns. In light of available mitigation measures, and with DHS' pledge to expand capacity in a COVID-safe manner similar to expansions undertaken by HHS and ORR to address UC influx, CDC believes that the gradual resumption of normal border operations under Title 8 is feasible. With careful planning, this may be initiated in a stepwise manner that complies with COVID–19 mitigation protocols. HHS and CDC intend to support DHS in this effort and continues to work with DHS to provide technical guidance on COVID–19 mitigation strategies for their unique facilities and populations.[93] CDC understands that DHS intends to continue exercising case-by-case exceptions for individual SA and FMU based on a totality of the circumstances as CDC transitions away from this Order. CDC is also providing an additional exception to permit DHS to except noncitizens participating in a DHS-approved program that incorporates pre-processing COVID–19 testing in Mexico of the noncitizens, prior to their safe and orderly entry to the U.S. via ports of entry. Based on the incorporation of relevant COVID–19 mitigation measures in such programs, in consultation with CDC, CDC believes such an exception is consistent with its legal authorities and in the public health interest.

II. Legal Basis for This Order Under Sections 362 and 365 of the Public Health Service Act and 42 CFR 71.40

CDC is issuing this Order pursuant to sections 362 and 365 of the Public Health Service Act (42 U.S.C. 265, 268) and the implementing regulation at 42 CFR 71.40. In accordance with these authorities, the CDC Director is permitted to prohibit, in whole or in part, the introduction into the United States of persons from designated foreign countries (or one or more political subdivisions or regions thereof) or places, only for such period of time that the Director deems necessary to avert the serious danger of the introduction of a quarantinable communicable disease, by issuing an Order in which the Director determines that:

(1) By reason of the existence of any quarantinable communicable disease in a foreign country (or one or more political subdivisions or regions thereof) or place there is serious danger of the introduction of such quarantinable communicable disease into the United States; and

(2) This danger is so increased by the introduction of persons from such country (or one or more political subdivisions or regions thereof) or place that a suspension of the right to introduce such persons into the United States is required in the interest of public health.[94]

CDC has authority under Section 362 and the implementing regulation to issue this Order to mitigate the further spread of COVID–19 disease, especially as the need to prevent proliferation of COVID–19 disease related to SARS–CoV–2 virus variants is heightened while vaccination efforts continue. Section 362 and the implementing regulation provide the Director with a public health tool to suspend introduction of persons not only to prevent the introduction of a quarantinable communicable disease, but also to aid in continued efforts to mitigate spread of that disease.[95]

The term ''introduction into the United States'' is defined in 42 CFR 71.40 as ''the movement of a person from a foreign country (or one or more political subdivisions or regions thereof) or place, or series of foreign countries or places, into the United States so as to bring the person into contact with persons or property in the United States,

[91] This situation could change based on an increased influx of UC, changes in COVID–19 infection dynamics among UC, or unforeseen reductions in housing capacity.

[92] Note, the total number of SA encounters may include repeat encounters with SA who attempt entry again following expulsion.

[93] CDC has advised DHS on best practices with regard to testing noncitizens at the point they are released to U.S. communities to await further immigration proceedings. In addition to enforcing physical distancing (as practicable), mask-wearing, and testing for both noncitizens and personnel alike in POE and U.S. Border Patrol stations, CDC advises vaccination of DHS/CBP personnel to further reduce the risk of COVID–19 introduction, transmission, and spread in facilities and communities and protect the federal workforce. Widespread vaccination of federal employees and other personnel in congregate settings at POE and U.S. Border Patrol stations is another layer of the strategy that will lead to the normalization of border operations.

[94] 42 U.S.C. 265; 42 CFR 71.40.

[95] 85 FR 56424 at 56425–26.

in a manner that the Director determines to present a risk of transmission of a quarantinable communicable disease to persons, or a risk of contamination of property with a quarantinable communicable disease, even if the quarantinable communicable disease has already been introduced, transmitted, or is spreading within the United States.'' 42 CFR 71.40(b)(1). Similarly, the term ''serious danger of the introduction of such quarantinable communicable disease into the United States'' is defined as, ''the probable introduction of one or more persons capable of transmitting the quarantinable communicable disease into the United States, even if persons or property in the United States are already infected or contaminated with the quarantinable communicable disease.'' 42 CFR 71.40(b)(3).

In promulgating § 71.40, CDC and HHS noted that '''introduction' does not necessarily conclude the instant that a person first steps onto U.S. soil. The introduction of a person into the United States can occur not only when a person first steps onto U.S. soil, but also when a person on U.S. soil moves further into the United States, and begins to come into contact with persons or property in ways that increase the risk of transmitting the quarantinable communicable disease.'' [96] This language recognizes that many quarantinable communicable diseases, including COVID–19, may be spread by infected individuals who are asymptomatic and therefore unaware that they are capable of transmitting the disease. Even when a communicable disease is already circulating within the United States, prevention and mitigation of continued transmission of the virus is nevertheless a key public health measure. In this case, although COVID–19 has already been introduced and is spreading within the United States, this Order serves as an important disease-mitigation tool to protect public health. This is particularly true as new variants of the virus continue to emerge. By continuing to suspend the introduction of persons from foreign countries into the United States, this Order will help minimize the spread of variants and their ability to accelerate disease transmission.

Section 71.40(b)(2) defines ''[p]rohibit, in whole or in part, the introduction into the United States of persons'' in Section 362 as ''to prevent the introduction of persons into the United States by suspending any right to introduce into the United States, physically stopping or restricting movement into the United States, or physically expelling from the United States some or all of the persons.'' *See also* 42 U.S.C. 265 (authorizing the prohibition when the danger posed by the communicable disease ''is so increased by the introduction of persons from such country . . . or place that a suspension of the right to introduce such persons into the United States is required in the interest of public health''). Pursuant to that provision, this Order permits expulsion of persons covered by it, as did the prior Orders issued under this authority.[97] CDC recognizes that expulsion is an extraordinary action but, as explained in the Final Rule, the power to expel is critical where neither HHS/CDC, nor other Federal agencies, nor state or local governments have the facilities and personnel necessary to quarantine, isolate, or conditionally release the number of persons who would otherwise increase the serious danger of the introduction of a quarantinable communicable disease into the United States.[98] In those situations, the rapid expulsion of persons from the United States may be the most effective public health measure that HHS/CDC can implement within the finite resources of HHS/CDC and its Federal, State, and local partners.[99]

As stated in the Final Rule for 42 CFR 71.40, CDC ''may, in its discretion, consider a wide array of facts and circumstances when determining what is required in the interest of public health in a particular situation . . . includ[ing]: the overall number of cases of disease; any large increase in the number of cases over a short period of time; the geographic distribution of cases; any sustained (generational) transmission; the method of disease transmission; morbidity and mortality associated with the disease; the effectiveness of contact tracing; the adequacy of state and local healthcare systems; and the effectiveness of state and local public health systems and control measures.'' [100] Other factors noted in the Final Rule are the potential for disease spread among persons held in congregate settings, specifically during processing and holding at CBP facilities, and the potential for disease spread to the community at large.[101]

As stated in 42 CFR 71.40, this Order does not apply to U.S. citizens, U.S. nationals, lawful permanent residents, members of the armed forces of the United States and associated personnel if the Secretary of Defense provides assurance to the Director that the Secretary of Defense has taken or will take measures such as quarantine or isolation, or other measures maintaining control over such individuals, to prevent the risk of transmission of the quarantinable communicable disease into the United States, and U.S. government employees or contractors on orders abroad, or their accompanying family members who are on their orders or are members of their household, if the Director receives assurances from the relevant head of agency and determines that the head of the agency or department has taken or will take measures such as quarantine or isolation, to prevent the risk of transmission of a quarantinable communicable disease into the United States.[102]

In addition, this Order does not apply to those classes of persons excepted by the CDC Director. Including exceptions in the Order is consistent with Section 362 and 42 CFR 71.40, which permit the prohibition of introduction into the United States to be ''in whole or in part.'' As explained in the Final Rule for section 71.40, this language is intended to allow the Director to narrowly tailor the use of the authority to what is required in the interest of public health.[103] Pursuant to this capability, CDC is therefore excepting specific categories of persons from the Order, as described herein.

As required by Section 362, this Order will be in effect only for as long as it is needed to avert the serious danger of the introduction, transmission, and spread of COVID–19 into the United States and will be terminated when the continuation of the Order is no longer necessary to protect the public health. Finally, as directed by 42 CFR 71.40(c), the Order sets out the following:

(1) The foreign countries (or one or more political subdivisions or regions thereof) or places from which the introduction of persons is being prohibited;

(2) The period of time or circumstances under which the introduction of any persons or class of persons into the United States is being prohibited;

[96] *Id.* at 56425.

[97] *See id.* at 56425, 56433.

[98] *Id.* at 56425, 56445–46.

[99] *Id.* at 56425.

[100] *Id.* at 56444.

[101] *Id.* at 56434. Strain on healthcare systems was also cited as a factor in the Final Rule, specifically the additional strain that noncitizen migrant healthcare needs may place on already overburdened systems; the Final Rule described the reduction of this strain as a result of CDC's previously issued orders. *Id.* at 56431.

[102] 42 CFR 71.40(e) and (f).

[103] 85 FR 56424, 56444.

(3) The conditions under which that prohibition on introduction will be effective, in whole or in part, including any relevant exceptions that the Director determines are appropriate;

(4) The means by which the prohibition will be implemented; and

(5) The serious danger posed by the introduction of the quarantinable communicable disease in the foreign country or countries (or one or more political subdivisions or regions thereof) or places from which the introduction of persons is being prohibited.

III. Issuance and Implementation of Order

Based on the foregoing public health reassessment, I hereby issue this Order pursuant to Sections 362 and 365 of the Public Health Service (PHS) Act, 42 U.S.C. 265, 268, and their implementing regulations under 42 CFR part 71,[104] which authorize the CDC Director to suspend the right to introduce persons into the United States when the Director determines that the existence of a quarantinable communicable disease in a foreign country or place creates a serious danger of the introduction of such disease into the United States and the danger is so increased by the introduction of persons from the foreign country or place that a temporary suspension of the right of such introduction is necessary to protect public health. This Order hereby replaces and supersedes the Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists, issued on October 13, 2020 (October Order) [105] and affirms and incorporates the exception for UC published in the July Exception, such that UC are excepted from this Order.[106]

This Order addresses the current status of the COVID–19 public health emergency and ongoing public health concerns, including virus transmission dynamics, viral variants, mitigation efforts, the public health risks inherent to high migration volumes, low vaccination rates among migrants, and crowding of immigration facilities. In making this determination, I have considered myriad facts, including the congregate nature of border facilities and the high risk for COVID–19 outbreaks—especially now with the predominant, more transmissible Delta variant—presented following the introduction of an infected person, as well as the benefits of reducing such risks. I have also considered epidemiological information, including the viral transmissibility and asymptomatic transmission of COVID–19, the epidemiology and spread of SARS–CoV–2 variants, the morbidity and mortality associated with the disease for individuals in certain risk categories, as well as public health concerns with crowding at border facilities and resultant risk of transmission of additional quarantinable communicable diseases. I am issuing this Order to preserve the health and safety of U.S. citizens, U.S. nationals, and lawful permanent residents, and personnel and noncitizens in POE and U.S. Border Patrol stations by reducing the introduction, transmission, and spread of the virus that causes COVID–19, including new and existing variants, in congregate settings where covered noncitizens would otherwise be held while undergoing immigration processing, including at POE and U.S. Border Patrol stations at or near the U.S. land and adjacent coastal borders.

Based on an assessment of the current COVID–19 epidemiologic landscape and the U.S. government's ongoing efforts to accommodate UC, CDC does not find public health justification for this Order to apply with respect to UC, as outlined in the July Exception. Although CDC finds that, at this time, this Order should be applicable to FMU, CDC notes that there are fewer FMU than SA unlawfully entering the United States and many FMU are already being processed pursuant to Title 8 versus Title 42 given a variety of practical and other limitations on immediately expelling FMU. DHS has indicated that it plans to continue to partner with state and local agencies and nongovernmental organizations to provide testing, consequence management, and eventually vaccination to FMU who are determined to be eligible for Title 8 processing. CDC considers these efforts to be a critical risk reduction measure and encourages DHS to evaluate the potential expansion of such COVID–19 mitigation programs for FMU such that they may be excepted from this Order in the future. Although vaccination programs are not available at this time, CDC encourages DHS to develop such programs as quickly as practicable. While the migration of SA and FMU into the United States during the COVID–19 public health emergency continues and given the inherent risks that accompany holding these groups in crowded congregate settings with insufficient options for effective mitigation, CDC finds the public health justification for this Order is sustained at this time.

DHS has indicated that it is committed to restoring border operations and facilitating arrivals to the United States in a manner that comports with CDC's recommended COVID–19 mitigation protocols. Given the recent migrant surge, DHS believes that an incremental approach is the best way to recommence normal border operations while ensuring health and safety concerns are addressed. To this end, DHS will work to establish safe, efficient, and orderly processes that are consistent with appropriate health and safety protocols and the epidemiology of the COVID–19 pandemic, in consultation with CDC.

CDC's expectation is that although this Order will continue with respect to SA and FMU, DHS will use case-by-case exceptions based on the totality of the circumstances where appropriate to except individual SA and FMU in a manner that gradually recommences normal migration operations as COVID–19 health and safety protocols and capacity allows. DHS will consult with CDC to ensure that the standards for such exceptions are consistent with current CDC guidance and public health recommendations. Based on this incorporation of relevant COVID–19 mitigation measures, CDC believes it is consistent with the legal authorities and in the public health interest to continue the use of case-by-case exceptions as a step towards the resumption of normal border operations under Title 8. Additionally, DHS is working in coordination with nongovernmental organizations, state and local health departments, and other relevant facilitating organizations and entities as appropriate to develop DHS-approved processes that include pre-entry COVID–19 testing. Additional public health mitigation measures, such as maintaining physical distancing and use of masks, testing, and isolation and quarantine as appropriate, are included in such processes. DHS has documented these processes and shared them with CDC. CDC has consulted with DHS to ensure that the processes appropriately address public health concerns and align with relevant CDC COVID–19 mitigation protocols. Based on these plans and processes, CDC believes it is consistent with legal authorities and in the public health interest to permit an exception for noncitizens in such DHS-approved processes to allow for safe and orderly entry into the United States.

[104] Control of Communicable Diseases; Foreign Quarantine: Suspension of the Right to Introduce and Prohibition of Introduction of Persons into United States from Designated Foreign Countries or Places for Public Health Purposes, 85 FR 56424 (Sept. 11, 2020); 42 CFR 71.40.

[105] *Supra* note 4.

[106] *Supra* note 3.

A. Covered Noncitizens

This Order applies to persons traveling from Canada or Mexico (regardless of their country of origin) who would otherwise be introduced into a congregate setting in a POE or U.S. Border Patrol station at or near the U.S. land and adjacent coastal borders subject to certain exceptions detailed below; this includes noncitizens who do not have proper travel documents, noncitizens whose entry is otherwise contrary to law, and noncitizens who are apprehended at or near the border seeking to unlawfully enter the United States between POE. For purposes of this Order, I refer to persons covered by the Order as ''covered noncitizens.''

B. Exceptions

This Order does *not* apply to the following:

- U.S. citizens, U.S. nationals, and lawful permanent residents; [107]
- Members of the armed forces of the United States and associated personnel, U.S. government employees or contractors on orders abroad, or their accompanying family members who are on their orders or are members of their household, subject to required assurances; [108]
- Noncitizens who hold valid travel documents and arrive at a POE;
- Noncitizens in the visa waiver program who are not otherwise subject to travel restrictions and arrive at a POE;
- Unaccompanied Noncitizen Children; [109]
- Noncitizens who would otherwise be subject to this Order, who are permitted to enter the U.S. as part of a DHS-approved process, where the process approved by DHS has been documented and shared with CDC, and includes appropriate COVID–19 mitigation protocols, per CDC guidance; and
- Persons whom customs officers determine, with approval from a supervisor, should be excepted from this Order based on the totality of the circumstances, including consideration of significant law enforcement, officer and public safety, humanitarian, and public health interests. DHS will consult with CDC regarding the standards for such exceptions to help ensure consistency with current CDC guidance and public health recommendations.

C. APA, Review, and Termination

This Order shall be immediately effective. I consulted with DHS and other federal departments as needed before I issued this Order and requested that DHS continue to aid in the enforcement of this Order because CDC does not have the capability, resources, or personnel needed to do so.[110] As part of the consultation, DHS developed operational plans for implementing this Order. CDC has reviewed these plans and finds them to be consistent with the language of this Order directing that covered noncitizens spend as little time in congregate settings as practicable under the circumstances. In my view, DHS's assistance with implementing the Order is necessary, as CDC's other public health tools are not viable mechanisms given CDC resource and personnel constraints, the large numbers of covered noncitizens involved, and the likelihood that covered noncitizens do not have homes in the United States.[111]

This Order is not a rule subject to notice and comment under the Administrative Procedure Act (APA). Even if it were, notice and comment and a delay in effective date are not required because there is good cause to dispense with prior public notice and the opportunity to comment on this Order and a delayed effective date. Given the public health emergency caused by COVID–19, it would be impracticable and contrary to public health practices and the public interest to delay the issuing and effective date of this Order with respect to all covered noncitizens. In addition, this Order concerns ongoing discussions with Canada and Mexico on how best to control COVID–19 transmission over our shared borders and therefore directly ''involve[s] . . . a . . . foreign affairs function of the United States;'' [112] thus, notice and comment and a delay in effective date are not required.

This Order shall remain effective until either the expiration of the Secretary of HHS' declaration that COVID–19 constitutes a public health emergency, or I determine that the danger of further introduction, transmission, or spread of COVID–19 into the United States has ceased to be a serious danger to the public health and continuation of this Order is no longer necessary to protect public health, whichever occurs first. At least every 60 days, the CDC shall review the latest information regarding the status of the COVID–19 public health emergency and associated public health risks, including migration patterns, sanitation concerns, and any improvement or deterioration of conditions at the U.S. border, to determine whether the Order remains necessary to protect public health. Upon determining that the further introduction of COVID–19 into the United States is no longer a serious danger to the public health necessitating the continuation of this Order, I will publish a notice in the **Federal Register** terminating this Order. I retain the authority to modify or terminate the Order, or its implementation, at any time as needed to protect public health.

Authority

The authority for this Order is Sections 362 and 365 of the Public Health Service Act (42 U.S.C. 265, 268) and 42 CFR 71.40.

Dated: August 3, 2021.

Sherri Berger,

Chief of Staff, Centers for Disease Control and Prevention.

[FR Doc. 2021–16856 Filed 8–3–21; 4:15 pm]

BILLING CODE 4163–18–P

[107] 42 CFR 71.40(f).

[108] 42 CFR 71.40(e)(1) and (3).

[109] As excepted pursuant to the Public Health Determination Regarding an Exception for Unaccompanied Noncitizen Children from Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists. 86 FR 38717 (July 22, 2021).

[110] 42 U.S.C. 268; 42 CFR 71.40(d).

[111] CDC relies on the Department of Defense, other federal agencies, and state and local governments to provide both logistical support and facilities for federal quarantines. CDC lacks the resources, manpower, and facilities to quarantine covered noncitizens.

[112] 5 U.S.C. 553(a)(1).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10148 and CMS–10784]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our

burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by October 4, 2021.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10148 HIPAA Administrative Simplification (Non-Privacy/Security) Complaint Form

CMS–10784 The Home Health Care CAHPS® Survey (HHCAHPS) Mode Experiment

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* HIPAA Administrative Simplification (Non-Privacy/Security) Complaint Form; *Use:* The Secretary of Health and Human Services (HHS), hereafter known as ''The Secretary,'' codified 45 CFR parts 160 and 164 Administrative Simplification provisions that apply to the enforcement of the Health Insurance Portability and Accountability Act of 1996 Public Law 104–191 (HIPAA). The provisions address rules relating to the investigation of non-compliance of the HIPAA Administrative Simplification code sets, unique identifiers, operating rules, and transactions. 45 CFR 160.306, Complaints to the Secretary, provides for investigations of covered entities by the Secretary. Further, it outlines the procedures and requirements for filing a complaint against a covered entity.

Anyone can file a complaint if he or she suspects a potential violation. Persons believing that a covered entity is not utilizing the adopted Administrative Simplification provisions of HIPAA are voluntarily requested to file a complaint with CMS via the Administrative Simplification Enforcement and Testing Tool (ASETT) online system, by mail, or by sending an email to the HIPAA mailbox at *hipaacomplaint@cms.hhs.gov.* Information provided on the standard form will be used during the investigation process to validate non-compliance of HIPAA Administrative Simplification provisions.

This standard form collects identifying and contact information of the complainant, as well as the identifying and contact information of the filed against entity (FAE). This information enables CMS to respond to the complainant and gather more information if necessary, and to contact the FAE to discuss the complaint and CMS' findings. *Form Number:* CMS–10148 (OMB control number: 0938–0948); *Frequency:* Occasionally; *Affected Public:* Private sector, Business or Not-for-profit institutions, State, Local, or Tribal Governments, Federal Government, Not-for-profits institutions; *Number of Respondents:* 21; *Total Annual Responses:* 21; *Total Annual Hours:* 12. (For policy questions regarding this collection contact Kevin Stewart at 410–786–6149).

2. *Type of Information Collection Request:* New collection (Request for a new OMB control); *Title of Information Collection:* The Home Health Care CAHPS® Survey (HHCAHPS) Mode Experiment; *Use:* The reporting of quality data by HHAs is mandated by Section 1895(b)(3)(B)(v)(II) of the Social Security Act (''the Act''). This statute requires that ''each home health agency shall submit to the Secretary such data that the Secretary determines are appropriate for the measurement of health care quality. Such data shall be submitted in a form and manner, and at a time, specified by the Secretary for purposes of this clause.'' HHCAHPS data are mandated in the Medicare regulations at 42 CFR 484.250(a), which requires HHAs to submit HHCAHPS data to meet the quality reporting requirements of section 1895(b)(3)(B)(v) of the Act. This collection of information is necessary to be able to test updates to the HHCAHPS survey and administration protocols.

CMS proposes to conduct a mode experiment with the main goal of testing the effects of a web-based mode on response rates and scores as an addition to the three currently approved modes (OMB Control Number: 0938–1370). The addition of a web mode will give HHAs an alternative or an addition to the use of mail and telephone modes. CMS is also interested in testing a revised, shorter version of the HHCAHPS survey, based on feedback from patients and stakeholders.

The data collected from the HHCAHPS Survey mode experiment will be used for the following purposes:

- Test the shortened survey instrument, including several new items;
- Compare survey responses across the four proposed modes to determine if adjustments are needed to ensure that data collection mode does not influence results; and
- Determine if and by how much patient characteristics affect the patients' rating of the care they receive

and adjust results based on those factors.

The mode experiment is designed to examine the effects of the shortened survey on response rates and scores and to provide precise adjustment estimates for survey items and composites on the shortened survey instrument. Information from this mode experiment will help CMS determine whether an additional mode of administration (*i.e.,* Web data collection) should be included and a shortened survey instrument should be used in the current national implementation of the HHCAHPS Survey. *Form Number:* CMS–10784 (OMB control number: 0938–New); *Frequency:* Annually; *Affected Public:* Individuals or Households; *Number of Respondents:* 6,280; *Total Annual Responses:* 6,280; *Total Annual Hours:* 1,049. (For policy questions regarding this collection contact Lori E. Teichman at 410–786–6684).

Dated: August 2, 2021.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2021–16755 Filed 8–4–21; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–P–0271]

Determination That VOTRIENT (Pazopanib Hydrochloride) Tablets, 400 Milligrams, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that VOTRIENT (pazopanib hydrochloride) tablets, 400 milligrams (mg), were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for pazopanib hydrochloride tablets, 400 mg, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Sungjoon Chi, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6212, Silver Spring, MD 20993–0002, 240–402–9674, *Sungjoon.Chi@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

VOTRIENT (pazopanib hydrochloride) tablets, 400 mg, are the subject of NDA 022465, held by Novartis Pharmaceuticals Corp., and initially approved on October 19, 2009. VOTRIENT is a kinase inhibitor indicated for the treatment of patients with advanced renal cell carcinoma. VOTRIENT (pazopanib hydrochloride) tablets, 400 mg, are currently listed in the ''Discontinued Drug Product List'' section of the Orange Book.

Hyman, Phelps & McNamara, P.C., submitted a citizen petition dated March 5, 2021 (Docket No. FDA–2021–P–0271), under 21 CFR 10.30, requesting that the Agency determine whether VOTRIENT (pazopanib hydrochloride) tablets, 400 mg, were withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that VOTRIENT (pazopanib hydrochloride) tablets, 400 mg, were not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that VOTRIENT (pazopanib hydrochloride) tablets, 400 mg, were withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of VOTRIENT (pazopanib hydrochloride) tablets, 400 mg, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that this drug product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list VOTRIENT (pazopanib hydrochloride) tablets, 400 mg, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to VOTRIENT (pazopanib hydrochloride) tablets, 400 mg, may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: July 29, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–16692 Filed 8–4–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–3741]

Remanufacturing of Medical Devices; Draft Guidance for Industry and Food and Drug Administration Staff; Availability; Extension of Comment Period

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice of availability; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or Agency) is extending the comment period for the notice of availability that appeared in the **Federal Register** of June 24, 2021. In the notice of availability, FDA requested comments on draft guidance for industry and FDA staff entitled ''Remanufacturing of Medical Devices.'' The Agency is taking this action in response to a request for an extension to allow interested persons additional time to submit comments.

DATES: FDA is extending the comment period on the notice of availability published June 24, 2021 (86 FR 33305). Submit either electronic or written comments on the draft guidance by September 22, 2021, to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

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–2018–N–3741 for ''Remanufacturing of Medical Devices.'' Received comments 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.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''Remanufacturing of Medical Devices'' to the Office of Policy, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002 or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Katelyn Bittleman, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4250, Silver Spring, MD 20993–0002, 240–402–1478; Joshua Silverstein, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1615, Silver Spring, MD 20993–0002, 301–796–5155; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 24, 2021, FDA published a notice of availability with a 60-day comment period to request comments on the draft guidance for industry and FDA staff entitled ''Remanufacturing of Medical Devices.''

The Agency has received a request for a 30-day extension of the comment period. The request conveyed concern that the current 60-day comment period does not allow sufficient time to develop a meaningful or thoughtful response.

FDA has considered the request and is extending the comment period for the notice of availability for 30 days, until September 22, 2021. The Agency believes that a 30-day extension allows adequate time for interested persons to submit comments without significantly delaying guidance on these important issues.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Remanufacturing of Medical

Devices.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products* or from the Center for Biologics Evaluation and Research at *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances.* This guidance document is also available at *https://www.regulations.gov* and *https://www.fda.gov/regulatory-information/search-fda-guidance-documents.* Persons unable to download an electronic copy of ''Remanufacturing of Medical Devices'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 17048 and complete title to identify the guidance you are requesting.

Dated: July 30, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2021–16695 Filed 8–4–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–0270]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Survey on the Occurrence of Foodborne Illness Risk Factors in Selected Institutional Foodservice and Retail Food Stores Facility Types

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by September 7, 2021.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0799. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Survey on the Occurrence of Foodborne Illness Risk Factors in Selected Institutional Foodservice and Retail Food Stores Facility Types

OMB Control Number 0910–0799—Extension

I. Background

From 1998 to 2008, FDA's National Retail Food Team conducted a study to measure trends in the occurrence of foodborne illness risk factors, preparation practices, and employee behaviors most commonly reported to the Centers for Disease Control and Prevention as contributing factors to foodborne illness outbreaks at the retail level. Specifically, data were collected by FDA Specialists in retail and foodservice establishments at 5-year intervals (1998, 2003, and 2008) to observe and document trends in the occurrence of the following foodborne illness risk factors:

- Food from Unsafe Sources,
- Poor Personal Hygiene,
- Inadequate Cooking,
- Improper Holding/Time and Temperature, and
- Contaminated Equipment/Cross-Contamination.

FDA developed reports summarizing the findings for each of the three data collection periods, which were released in 2000, 2004, and 2009 (Refs. 1 to 3). Data from all three data collection periods were analyzed to detect trends in improvement or regression over time and to determine whether progress had been made toward the goal of reducing the occurrence of foodborne illness risk factors in selected retail and foodservice facility types (Ref. 4).

Using this 10-year survey as a foundation, in 2013 to 2014, FDA initiated a new study period. This study will span 10 years. FDA completed the baseline data collection in select healthcare, schools, and retail food store facility types in 2015 to 2016, and these data are being evaluated for trends and significance. A second data collection began in 2019 to 2020 and will be completed if it is safe to do so (pending COVID–19 pandemic), and an additional data collection is planned for 2023 to 2024 (the subject of this information collection request extension). Three data collections are necessary to trend the data.

TABLE 1—DESCRIPTION OF THE FACILITY TYPES INCLUDED IN THE SURVEY

Facility type	Description
Healthcare Facilities	Hospitals and long-term care facilities foodservice operations that prepare meals for highly susceptible populations as defined as follows:

TABLE 1—DESCRIPTION OF THE FACILITY TYPES INCLUDED IN THE SURVEY—Continued

Facility type	Description
	• Hospitals—A foodservice operation that provides for the nutritional needs of inpatients by preparing meals and transporting them to the patient's room and/or serving meals in a cafeteria setting (meals in the cafeteria may also be served to hospital staff and visitors). • Long-term care facilities—A foodservice operation that prepares meals for the residents in a group care living setting such as nursing homes and assisted living facilities. **Note:** For the purposes of this study, healthcare facilities that do not prepare or serve food to a highly susceptible population, such as mental healthcare facilities, are not included in this facility type category.
Schools (K–12)	Foodservice operations that have the primary function of preparing and serving meals for students in one or more grade levels from kindergarten through grade 12. A school foodservice may be part of a public or private institution.
Retail Food Stores	Supermarkets and grocery stores that have a deli department/operation as described as follows: • Deli department/operation—Areas in a retail food store where foods, such as luncheon meats and cheeses, are sliced for the customers and where sandwiches and salads are prepared onsite or received from a commissary in bulk containers, portioned, and displayed. Parts of deli operations may include: • Salad bars, pizza stations, and other food bars managed by the deli department manager. • Areas where other foods are cooked or prepared and offered for sale as ready-to-eat and are managed by the deli department manager. Data will also be collected in the following areas of a supermarket or grocery store, if present: • Seafood department/operation—Areas in a retail food store where seafood is cut, prepared, stored, or displayed for sale to the consumer. In retail food stores where the seafood department is combined with another department (*e.g.,* meat), the data collector will only assess the procedures and practices associated with the processing of seafood. • Produce department/operation—Areas in a retail food store where produce is cut, prepared, stored, or displayed for sale to the consumer. A produce operation may include salad bars or juice stations that are managed by the produce manager.

The results of this 10-year study period will be used to:

• Develop retail food safety initiatives, policies, and targeted intervention strategies focused on controlling foodborne illness risk factors;

• provide technical assistance to State, local, tribal, and territorial regulatory professionals;

• identify FDA retail work plan priorities; and

• inform FDA resource allocation to enhance retail food safety nationwide.

The statutory basis for FDA conducting this study is derived from the Public Health Service Act (PHS Act) (42 U.S.C. 243, section 311(a)). Responsibility for carrying out the provisions of the PHS Act relative to food protection was transferred to the Commissioner of Food and Drugs in 1968 (21 CFR 5.10(a)(2) and (4)). Additionally, the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*) and the Economy Act (31 U.S.C. 1535) require FDA to provide assistance to other Federal, State, and local government bodies.

The objectives of this study are to:

• Identify the least and most often occurring foodborne illness risk factors and food safety behaviors/practices in select retail food establishments within the United States.

• determine the extent to which food safety management systems and the presence of a certified food protection manager impact the occurrence of foodborne illness risk factors and food safety behaviors/practices; and

• determine whether the occurrence of foodborne illness risk factors and food safety behaviors/practices in delis differs based on an establishment's risk categorization and status as a single-unit or multiple-unit operation (*e.g.,* establishments that are part of an operation with two or more units).

The methodology to be used for this information collection is described as follows. To obtain a sufficient number of observations to conduct statistically significant analysis, FDA will conduct approximately 400 data collections in each facility type. This sample size has been calculated to provide for sufficient observations to be 95 percent confident that the compliance percentage is within 5 percent of the true compliance percentage.

A geographical information system database containing a listing of businesses throughout the United States provides the establishment inventory for the data collections. FDA samples establishments from the inventory based on the descriptions in table 1. FDA does not intend to sample operations that handle only prepackaged food items or conduct low-risk food preparation activities. The ''FDA Food Code'' contains a grouping of establishments by risk, based on the type of food preparation that is normally conducted within the operation (Ref. 5). The intent is to sample establishments that fall under risk categories 2 through 4.

FDA has approximately 23 Regional Retail Food Specialists (Specialists) who serve as the data collectors for the 10-year study. The Specialists are geographically dispersed throughout the United States and possess technical expertise in retail food safety and a solid understanding of the operations within each of the facility types to be surveyed. The Specialists are also standardized by FDA's Center for Food Safety and Applied Nutrition personnel in the application and interpretation of the FDA Food Code (Ref. 5).

Sampling zones have been established that are equal to the 175-mile radius around a Specialist's home location. The sample is selected randomly from among all eligible establishments located within these sampling zones. The Specialists are generally located in major metropolitan areas (*i.e.,* population centers) across the contiguous United States. Population centers usually contain a large concentration of the establishments FDA intends to sample. Sampling from the 175-mile radius sampling zones around the Specialists' home locations provides three advantages to the study:

1. It provides a cross-section of urban and rural areas from which to sample the eligible establishments.

2. It represents a mix of small, medium, and large regulatory entities having jurisdiction over the eligible establishments.

3. It reduces overnight travel and therefore reduces travel costs incurred by the Agency to collect data.

The sample for each data collection period is evenly distributed among Specialists. Given that participation in the study by industry is voluntary and the status of any given randomly selected establishment is subject to change, substitute establishments have been selected for each Specialist for cases where the institutional foodservice, school, or retail food store facility is misclassified, closed, or otherwise unavailable, unable, or unwilling to participate.

Prior to conducting the data collection, Specialists contact the State or local jurisdiction that has regulatory responsibility for conducting retail food inspections for the selected establishment. The Specialist verifies with the jurisdiction that the facility has been properly classified for the purposes of the study and is still in operation. The Specialist ascertains whether the selected facility is under legal notice from the State or local regulatory authority. If the selected facility is under legal notice, the Specialist will not conduct a data collection, and a substitute establishment will be used. An invitation is extended to the State or local regulatory authority to accompany the Specialist on the data collection visit.

A standard form is used by the Specialists during each data collection. The form is divided into three sections: Section 1—''Establishment Information''; Section 2—''Regulatory Authority Information''; and Section 3—''Foodborne Illness Risk Factor and Food Safety Management System Assessment.'' The information in Section 1—''Establishment Information'' of the form is obtained during an interview with the establishment owner or person in charge by the Specialist and includes a standard set of questions.

The information in Section 2—''Regulatory Authority Information'' is obtained during an interview with the program director of the State or local jurisdiction that has regulatory responsibility for conducting inspections for the selected establishment. Section 3—''Foodborne Illness Risk Factor and Food Safety Management System Assessment'' includes three parts: Part A for tabulating the Specialists' observations of the food employees' behaviors and practices in limiting contamination, proliferation, and survival of food safety hazards; Part B for assessing the food safety management system being implemented by the facility; and Part C for assessing the frequency and extent of food employee hand washing. The information in Part A is collected from the Specialists' direct observations of food employee behaviors and practices. Infrequent, nonstandard questions may be asked by the Specialists if clarification is needed on the food safety procedure or practice being observed. The information in Part B is collected by making direct observations and asking followup questions of facility management to obtain information on the extent to which the food establishment has developed and implemented food safety management systems. The information in Part C is collected by making direct observations of food employee hand washing. No questions are asked in the completion of Section 3, Part C of the form.

FDA collects the following information associated with the establishment's identity: Establishment name, street address, city, State, ZIP Code, county, industry segment, and facility type. The establishment identifying information is collected to ensure the data collections are not duplicative. Other information related to the nature of the operation, such as seating capacity and number of employees per shift, is also collected. Data will be consolidated and reported in a manner that does not reveal the identity of any establishment included in the study.

FDA has collaborated with the Food Protection and Defense Institute to develop a web-based platform in FoodSHIELD to collect, store, and analyze data for the Retail Risk Factor Study. This platform is accessible to State, local, territorial, and tribal regulatory jurisdictions to collect data relevant to their own risk factor studies. For the 2015 to 2016 data collection, FDA piloted the use of hand-held technology for capturing the data onsite during the data collection visits. The tablets that were made available for the data collections were part of a broader FDA initiative focused on internal uses of hand-held technology. The tablets provided for the data collection presented several technical and logistical challenges and increased the time burden associated with the data collection as compared to the manual entry of data collections. For these reasons, FDA will not be incorporating use of hand-held technology in subsequent data collections during the 10-year study period.

When a data collector is assigned a specific establishment, he or she conducts the data collection and enters the information into the web-based data platform. The interface will support the manual entering of data, as well as the ability to directly enter information in the database via a web browser.

The burden for the 2023 to 2024 data collection is as follows. For each data collection, the respondents will include: (1) The person in charge of the selected facility (whether it be a healthcare facility, school, or supermarket/grocery store); and (2) the program director (or designated individual) of the respective regulatory authority. To provide the sufficient number of observations needed to conduct a statistically significant analysis of the data, FDA has determined that 400 data collections will be required in each of the three facility types. Therefore, the total number of responses will be 2,400 (400 data collections $\times$ 3 facility types $\times$ 2 respondents per data collection).

The burden associated with the completion of Sections 1 and 3 of the form is specific to the persons in charge of the selected facilities. The burden includes the time it will take the person in charge to accompany the data collector during the site visit and answer the data collector's questions. The burden related to the completion of Section 2 of the form is specific to the program directors (or designated individuals) of the respective regulatory authorities. This burden includes the time it will take to answer the data collectors' questions and is the same regardless of the facility type.

In the **Federal Register** of February 18, 2021 (86 FR 10087), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received one comment.

(Comment) An interested citizen submitted the following comment:

a. The previous 10-year study conducted by FDA did not mention negative trends in the ''other'' category, which included information about contamination risk factors as they relate to food or color additives, poisonous or toxic materials, or storage of poisonous or toxic materials for retail sale. This negative trend should be reported.

b. In the 2013 to 2014 report on restaurants the ''other'' contamination risk factor did not appear in the report. This should remain the same as the previous 10-year study for comparison purposes.

c. FDA should keep chemicals as a risk factor for future research on the occurrence of foodborne illness risk factors.

(Response) FDA acknowledges the submission of the question from a concerned citizen and provides the following response:

a. FDA acknowledges the commenter's concern on a perceived lack of reporting on negative trends within the previous 10-year study.

b. FDA report on the results of the 2013 to 2014 data collection was the first report with the new study design of the 10-year study. One of the significant design changes from the 1998 to 2008 Study is the reduction of the number of data items from 42 to 10. The focus on the 10 primary data items provides the opportunity to obtain enough observations of food safety practices and procedures to report statistically significant study conclusions and correlations.

In an effort to focus messaging on the most prevalent food safety practices and behaviors found out of compliance, secondary data items (items 11–19) were not reported at that time. FDA focused the report on the primary 10 data items that directly correspond with the foodborne illness risk factors included in the study. The new study design includes ''Other Areas of Interest'' that support the primary data items or track an area that is not likely to have a sufficient enough number of observations for statistical purposes but is an important food safety practice within the retail segment of the industry—such as Item 18, ''Toxic materials are identified, used, and stored properly as outlined in the marking instructions'', (Attachment B). The current data collection continues to collect information on the provisions within the food code that address the safe storage, handling, and use of toxic and poisonous substances. If significant findings occur, FDA is committed to reporting those findings. From the 2015 data collection forward, FDA will be publishing a topline summary report to include information on data items 11–18. These reports can be accessed at *https://www.fda.gov/retailfoodriskfactorstudy.*

c. While not listed as one of the five main foodborne illness risk factors in the current study design, controlling chemicals and toxic substances in food service facilities is important to prevent injury and illness and FDA recognizes this. The information gathered in Data Item 18 as described above helps FDA keep a pulse on risky behaviors surrounding toxic or poisonous materials in retail facilities. The purpose of the current 10-year study is primarily to collect information on the five foodborne illness risk factors and study to elucidate relationships between the foodborne illness risk factors and food safety management systems, and certified food protection managers.

To calculate the estimate of the hours per response, FDA uses the average data collection duration for similar facility types during the FDA's 2008 Risk Factor Study (Ref. 3) plus an additional 30 minutes (0.5 hours) for the information related to Section 3, Part B of the form. FDA estimates that it will take the persons in charge of healthcare facility types, schools, and retail food stores 150 minutes (2.5 hours), 120 minutes (2 hours), and 180 minutes (3 hours), respectively, to accompany the data collectors while they complete Sections 1 and 3 of the form. FDA estimates that it will take the program director (or designated individual) of the respective regulatory authority 30 minutes (0.5 hours) to answer the questions related to Section 2 of the form. This burden estimate is unchanged from the last data collection. Hence, the total burden estimate for a data collection in healthcare facility types is 180 minutes (150 + 30) (3 hours), in schools is 150 minutes (120 + 30) (2.5 hours), and retail food stores is 210 minutes (180 + 30) (3.5 hours).

Based on the number of entry refusals from the 2015 to 2016 baseline data collection, we estimate a refusal rate of 2 percent for the data collections within healthcare, school, and retail food store facility types. The estimate of the time per non-respondent is 5 minutes (0.08 hours) for the person in charge to listen to the purpose of the visit and provide a verbal refusal of entry.

FDA estimates the burden of this collection of information as follows:

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Number of non-respondents	Number of responses per non-respondent	Total annual non-responses	Average burden per response	Total hours
2023–2024 Data Collection (Healthcare Facilities)—Completion of Sections 1 and 3.	400	1	400	.....	.....	.....	2.5	1,000
2023–2024 Data Collection (Schools)—Completion of Sections 1 and 3.	400	1	400	.....	.....	.....	2	800
2023–2024 Data Collection (Retail Food Stores)—Completion of Sections 1 and 3.	400	1	400	.....	.....	.....	3	1,200
2023–2024 Data Collection-Completion of Section 2—All Facility Types.	1,200	1	1,200	.....	.....	.....	0.5 (30 minutes)	600
2023–2024 Data Collection-Entry Refusals—All Facility Types.	.....	.....	.....	24	1	24	0.08 (5 minutes)	1.92
Total	.....	.....	.....	.....	.....	.....	.....	3,601.92

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

II. References

The following references are on display in the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500 and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov*. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. ''Report of the FDA Retail Food Program Database of Foodborne Illness Risk

Factors (2000).'' Available at: *https://wayback.archive-it.org/7993/20170406023019/https://www.fda.gov/downloads/Food/GuidanceRegulation/UCM123546.pdf*.
2. ''FDA Report on the Occurrence of Foodborne Illness Risk Factors in Selected Institutional Foodservice, Restaurant, and Retail Food Store Facility Types (2004).'' Available at: *https://wayback.archive-it.org/7993/20170406023011/https://www.fda.gov/downloads/Food/GuidanceRegulation/RetailFoodProtection/FoodborneIllnessRiskFactorReduction/UCM423850.pdf*.
3. ''FDA Report on the Occurrence of Foodborne Illness Risk Factors in Selected Institutional Foodservice, Restaurant, and Retail Food Store Facility Types (2009).'' Available at: *https://wayback.archive-it.org/7993/20170406023004/https://www.fda.gov/Food/GuidanceRegulation/RetailFoodProtection/FoodborneIllnessRiskFactorReduction/ucm224321.htm*.
4. FDA National Retail Food Team. ''FDA Trend Analysis Report on the Occurrence of Foodborne Illness Risk Factors in Selected Institutional Foodservice, Restaurant, and Retail Food Store Facility Types (1998–2008).'' (2010). Available at: *https://wayback.archive-it.org/7993/20170406022950/https://www.fda.gov/Food/GuidanceRegulation/RetailFoodProtection/FoodborneIllnessRiskFactorReduction/ucm223293.htm*.
5. ''FDA Food Code.'' Available at: *https://www.fda.gov/food/retail-food-protection/fda-food-code*.

Dated: July 28, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–16700 Filed 8–4–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0771]

Advancing the Development of Pediatric Therapeutics Complex Innovative Trial Design; Public Workshop

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following public workshop entitled ''Advancing the Development of Pediatric Therapeutics (ADEPT 7) Complex Innovative Trial Design.'' The purpose of the public workshop is to discuss applications of complex and innovative trial designs in pediatric clinical trials.

DATES: The public workshop will be held virtually on September 1, 2021 (Day 1), from 10 a.m. to 3 p.m. Eastern Time and September 2, 2021 (Day 2), from 10 a.m. to 3 p.m. Eastern Time. See the **SUPPLEMENTARY INFORMATION** section for registration information.

ADDRESSES: The public workshop will be held in virtual format only. Please note that due to the impact of this COVID–19 pandemic, all meeting participants will be joining this public meeting via an online teleconferencing platform and will not be held at a specific location.

FOR FURTHER INFORMATION CONTACT: Evangela Covert, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5234, Silver Spring, MD 20993, 301–796–4075, *Evangela.Covert@fda.hhs.gov;* or Denise Pica-Branco, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6402, Silver Spring, MD 20993, 301–796–4075, *Denise.Picabranco@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Over the last two decades, great advances have been made in pediatric drug development. In addition, there is a growing recognition that complex and innovative trial designs have the potential to optimize drug development in small populations. Innovations that have been proposed include Bayesian and other methods of utilizing external historical information from previous pediatric trials or other populations (such as adults), adaptive designs, bridging biomarkers, etc. These designs tend to require more extensive discussion and collaboration between drug developers and regulators to implement effectively.

The Complex Innovative Trial Design Pilot Meeting Program (CID Program) facilitates and advances the use of these types of designs by providing for increased interactions between staff in the Center for Drug Evaluation and Research and the Center for Biologics Evaluation and Research and sponsors accepted into the program. Several pediatric study designs have been accepted into the CID Program. This workshop is being organized in collaboration with the CID Program.

II. Topics for Discussion at the Public Workshop

The main objective of the ''Advancing the Development of Pediatric Therapeutics (ADEPT 7) Complex Innovative Trial Design'' workshop is to discuss opportunities for leveraging complex and innovative trial designs, understand the challenges with their applications, and develop solutions on how challenges in the designs can be overcome. The workshop will specifically focus on two topics of interest: Bridging biomarkers in pediatric extrapolation and Bayesian techniques in pediatric studies. In addition, the workshop will allow for an open dialogue around the use of these approaches among regulators, industry, academia, and patient organizations.

III. Participating in the Public Workshop

Registration: To register for the public workshop, please visit the following website: *https://go.umd.edu/ADEPT7*. Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone.

Registration is free and based on space availability, with priority given to early registrants. Early registration is recommended because space is limited; therefore, FDA may limit the number of participants from each organization.

If you need special accommodations due to a disability, please contact

Evangela Covert or Denise Pica-Branco (see **FOR FURTHER INFORMATION CONTACT**) no later than August 18, 2021, by 5 p.m. Eastern Time.

Streaming Webcast of the Public Workshop: This public workshop will also be webcast at the following site: *https://collaboration.fda.gov/adept7*.

If you have never attended a Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm*. To get a quick overview of the Connect Pro program, visit *https://www.adobe.com/go/connectpro_overview*. FDA has verified the website addresses in this document, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

Dated: August 2, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2021–16709 Filed 8–4–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0335]

Authorizations of Emergency Use of Certain Biological Products During the COVID–19 Pandemic; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of two Emergency Use Authorizations (EUAs) (the Authorizations) under the Federal Food, Drug, and Cosmetic Act (FD&C Act) for biological products for use during the COVID–19 pandemic. FDA has issued one Authorization for a biological product as requested by GlaxoSmithKline LLC and one Authorization for a biological product as requested by Genentech, Inc. The Authorizations contain, among other things, conditions on the emergency use of the authorized products. The Authorizations follow the February 4, 2020, determination by the Secretary of Health and Human Services (HHS) that there is a public health emergency that has a significant potential to affect national security or the health and security of U.S. citizens living abroad and that involves a novel (new) coronavirus. The virus, now named SARS–CoV–2, causes the illness COVID–19. On the basis of such determination, the Secretary of HHS declared on March 27, 2020, that circumstances exist justifying the authorization of emergency use of drugs and biological products during the COVID–19 pandemic, pursuant to the FD&C Act, subject to the terms of any authorization issued under that section. The Authorizations, which include an explanation of the reasons for issuance, are reprinted in this document.

DATES: The Authorization for GlaxoSmithKline LLC is effective as of May 26, 2021, and the Authorization for Genentech, Inc. is effective as of June 24, 2021.

ADDRESSES: Submit written requests for single copies of the EUAs to the Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4338, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a Fax number to which the Authorizations may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the Authorizations.

FOR FURTHER INFORMATION CONTACT: Michael Mair, Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4340, Silver Spring, MD 20993–0002, 301–796–8510 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb–3) allows FDA to strengthen public health protections against biological, chemical, nuclear, and radiological agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. With this EUA authority, FDA can help ensure that medical countermeasures may be used in emergencies to diagnose, treat, or prevent serious or life-threatening diseases or conditions caused by biological, chemical, nuclear, or radiological agents when there are no adequate, approved, and available alternatives (among other criteria).

II. Criteria for EUA Authorization

Section 564(b)(1) of the FD&C Act provides that, before an EUA may be issued, the Secretary of HHS must declare that circumstances exist justifying the authorization based on one of the following grounds: (1) A determination by the Secretary of Homeland Security that there is a domestic emergency, or a significant potential for a domestic emergency, involving a heightened risk of attack with a biological, chemical, radiological, or nuclear agent or agents; (2) a determination by the Secretary of Defense that there is a military emergency, or a significant potential for a military emergency, involving a heightened risk to U.S. military forces, including personnel operating under the authority of title 10 or title 50, U.S. Code, of attack with (A) a biological, chemical, radiological, or nuclear agent or agents; or (B) an agent or agents that may cause, or are otherwise associated with, an imminently life-threatening and specific risk to U.S. military forces; [1] (3) a determination by the Secretary of HHS that there is a public health emergency, or a significant potential for a public health emergency, that affects, or has a significant potential to affect, national security or the health and security of U.S. citizens living abroad, and that involves a biological, chemical, radiological, or nuclear agent or agents, or a disease or condition that may be attributable to such agent or agents; or (4) the identification of a material threat by the Secretary of Homeland Security pursuant to section 319F–2 of the Public Health Service (PHS) Act (42 U.S.C. 247d–6b) sufficient to affect national security or the health and security of U.S. citizens living abroad.

Once the Secretary of HHS has declared that circumstances exist justifying an authorization under section 564 of the FD&C Act, FDA may authorize the emergency use of a drug, device, or biological product if the Agency concludes that the statutory criteria are satisfied. Under section 564(h)(1) of the FD&C Act, FDA is required to publish in the **Federal Register** a notice of each authorization, and each termination or revocation of an authorization, and an explanation of the reasons for the action. Under section 564(h)(1) of the FD&C Act, revisions to an authorization shall be made available on the internet website of FDA. Section 564 of the FD&C Act permits FDA to authorize the introduction into interstate commerce of a drug, device, or biological product intended for use in an actual or potential emergency when the Secretary of HHS has declared that circumstances exist justifying the authorization of emergency use. Products appropriate for emergency use may include products and uses that are not approved, cleared, or licensed under sections 505, 510(k), 512, or 515 of the FD&C Act (21 U.S.C. 355, 360(k), 360b, and 360e) or section 351 of the PHS Act (42 U.S.C. 262), or conditionally approved under section 571 of the FD&C Act (21 U.S.C. 360ccc). FDA may issue an EUA only if, after consultation with the HHS Assistant Secretary for Preparedness and Response, the Director of the National Institutes of Health, and the Director of the Centers for Disease Control and Prevention (to the extent feasible and appropriate given the applicable circumstances), FDA [2] concludes: (1) That an agent referred to in a declaration of emergency or threat can cause a serious or life-threatening disease or condition; (2) that, based on the totality of scientific evidence available to FDA, including

[1] In the case of a determination by the Secretary of Defense, the Secretary of HHS shall determine within 45 calendar days of such determination, whether to make a declaration under section 564(b)(1) of the FD&C Act, and, if appropriate, shall promptly make such a declaration.

[2] The Secretary of HHS has delegated the authority to issue an EUA under section 564 of the FD&C Act to the Commissioner of Food and Drugs.

data from adequate and well-controlled clinical trials, if available, it is reasonable to believe that: (A) The product may be effective in diagnosing, treating, or preventing (i) such disease or condition; or (ii) a serious or life-threatening disease or condition caused by a product authorized under section 564, approved or cleared under the FD&C Act, or licensed under section 351 of the PHS Act, for diagnosing, treating, or preventing such a disease or condition caused by such an agent; and (B) the known and potential benefits of the product, when used to diagnose, prevent, or treat such disease or condition, outweigh the known and potential risks of the product, taking into consideration the material threat posed by the agent or agents identified in a declaration under section 564(b)(1)(D) of the FD&C Act, if applicable; (3) that there is no adequate, approved, and available alternative to the product for diagnosing, preventing, or treating such disease or condition; (4) in the case of a determination described in section 564(b)(1)(B)(ii), that the request for emergency use is made by the Secretary of Defense; and (5) that such other criteria as may be prescribed by regulation are satisfied.

No other criteria for issuance have been prescribed by regulation under section 564(c)(4) of the FD&C Act.

III. The Authorizations

The Authorizations follow the February 4, 2020, determination by the Secretary of HHS that there is a public health emergency that has a significant potential to affect national security or the health and security of U.S. citizens living abroad and that involves a novel (new) coronavirus. The virus, now named SARS–CoV–2, causes the illness COVID–19. Notice of the Secretary's determination was provided in the **Federal Register** on February 7, 2020 (85 FR 7316). On the basis of such determination, the Secretary of HHS declared on March 27, 2020, that circumstances exist justifying the authorization of emergency use of drugs and biological products during the COVID–19 pandemic, pursuant to section 564 of the FD&C Act, subject to the terms of any authorization issued under that section. Notice of the Secretary's declaration was provided in the **Federal Register** on April 1, 2020 (85 FR 18250). Having concluded that the criteria for issuance of the Authorizations under section 564(c) of the FD&C Act are met, FDA has issued two authorizations for the emergency use of biological products during the COVID–19 pandemic. On May 26, 2021, FDA issued an EUA to GlaxoSmithKline LLC for sotrovimab, subject to the terms of the Authorization. On June 24, 2021, FDA issued an EUA to Genentech, Inc. for ACTEMRA (tocilizumab), subject to the terms of the Authorization. The initial Authorizations, which are included below in their entirety after section IV of this document (not including the authorized versions of the fact sheets and other written materials), provide an explanation of the reasons for issuance, as required by section 564(h)(1) of the FD&C Act. Any subsequent reissuances of these Authorizations can be found on FDA's web page: *https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization.*

IV. Electronic Access

An electronic version of this document and the full text of the Authorizations and are available on the internet at *https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization.*

BILLING CODE 4164–01–P

May 26, 2021

GlaxoSmithKline LLC
Attention: Debra H. Lake, M.S.
Senior Director, Global Regulatory Affairs
Five Moore Drive
PO Box 13398
Durham, North Carolina 27709

RE: Emergency Use Authorization 100

Dear Ms. Lake:

This letter is in response to GlaxoSmithKline LLC's (GSK) request that the Food and Drug Administration (FDA) issue an Emergency Use Authorization (EUA) for the emergency use of sotrovimab for the treatment of mild-to-moderate coronavirus disease 2019 (COVID-19), as described in the Scope of Authorization (Section II) of this letter, pursuant to Section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. §360bbb-3).

On February 4, 2020, pursuant to Section 564(b)(1)(C) of the Act, the Secretary of the Department of Health and Human Services (HHS) determined that there is a public health emergency that has a significant potential to affect national security or the health and security of United States citizens living abroad, and that involves the virus that causes coronavirus disease 2019 (COVID-19).[1] On the basis of such determination, the Secretary of HHS on March 27, 2020, declared that circumstances exist justifying the authorization of emergency use of drugs and biological products during the COVID-19 pandemic, pursuant to Section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3), subject to terms of any authorization issued under that section.[2]

Sotrovimab is a recombinant human IgG1κ monoclonal antibody that binds to a conserved epitope on the spike protein receptor binding domain of SARS-CoV-2. Sotrovimab does not compete with human ACE2 receptor binding. Sotrovimab is an investigational drug and is not currently approved for any indication.

Based on review of the interim analysis of phase 1/2/3 data from the COMET-ICE clinical trial (NCT #04545060), a randomized, double-blind, placebo-controlled clinical trial evaluating the safety and efficacy of sotrovimab 500 mg IV in outpatient (non-hospitalized) adults with SARS-CoV-2 infection, it is reasonable to believe that sotrovimab may be effective for the treatment of

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[1] U.S. Department of Health and Human Services, *Determination of a Public Health Emergency and Declaration that Circumstances Exist Justifying Authorizations Pursuant to Section 564(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 360bbb-3*. February 4, 2020.

[2] U.S. Department of Health and Human Services, *Declaration that Circumstances Exist Justifying Authorizations Pursuant to Section 564(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 360bbb-3*, 85 FR 18250 (April 1, 2020).

mild-to-moderate COVID-19 in adults and pediatric patients (12 years of age and older weighing at least 40 kg) with positive results of direct SARS-CoV-2 viral testing, and who are at high risk for progression to severe COVID-19, including hospitalization or death, and when used under the conditions described in this authorization, the known and potential benefits of sotrovimab outweigh the known and potential risks of such product.

Having concluded that the criteria for issuance of this authorization under Section 564(c) of the Act are met, I am authorizing the emergency use of sotrovimab for treatment of COVID-19, as described in the Scope of Authorization section of this letter (Section II) and subject to the terms of this authorization.

I. Criteria for Issuance of Authorization

I have concluded that the emergency use of sotrovimab for the treatment of COVID-19 when administered as described in the Scope of Authorization (Section II) meets the criteria for issuance of an authorization under Section 564(c) of the Act, because:

1. SARS-CoV-2 can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus;

2. Based on the totality of scientific evidence available to FDA, it is reasonable to believe that sotrovimab may be effective in treating mild-to-moderate COVID-19 in adults and pediatric patients (12 years of age and older weighing at least 40 kg) with positive results of direct SARS-CoV-2 viral testing, and who are at high risk for progression to severe COVID-19, including hospitalization or death, and that, when used under the conditions described in this authorization, the known and potential benefits of sotrovimab outweigh the known and potential risks of such products; and

3. There is no adequate, approved, and available alternative to the emergency use of sotrovimab for the treatment of mild-to-moderate COVID-19 in adults and pediatric patients (12 years of age and older weighing at least 40 kg) with positive results of direct SARS-CoV-2 viral testing, and who are at high risk for progression to severe COVID-19, including hospitalization or death.[3]

II. Scope of Authorization

I have concluded, pursuant to Section 564(d)(1) of the Act, that the scope of this authorization is limited as follows:

- Sotrovimab will be used only by healthcare providers to treat mild-to-moderate COVID-19 in adults and pediatric patients (12 years of age and older weighing at least 40 kg) with positive results of direct SARS-CoV-2 viral testing, and who are at high risk for progression to severe COVID-19, including hospitalization or death;

[3] No other criteria of issuance have been prescribed by regulation under Section 564(c)(4) of the Act.

- Sotrovimab is not authorized for use in the following patient populations[4]:
  - Adults or pediatric patients who are hospitalized due to COVID-19, or
  - Adults or pediatric patients who require oxygen therapy due to COVID-19, or
  - Adults or pediatric patients who require an increase in baseline oxygen flow rate due to COVID-19 in those patients on chronic oxygen therapy due to underlying non-COVID-19-related comorbidity.

- Sotrovimab may only be administered in settings in which health care providers have immediate access to medications to treat a severe infusion reaction, such as anaphylaxis, and the ability to activate the emergency medical system (EMS), as necessary.

- The use of sotrovimab covered by this authorization must be in accordance with the authorized Fact Sheets.

Product Description

Sotrovimab is supplied in individual single dose vials. Individual vials and carton container labeling for sotrovimab are clearly marked "For use under Emergency Use Authorization." Sotrovimab is a recombinant human IgG1κ monoclonal antibody that binds to a conserved epitope on the spike protein receptor binding domain of SARS-CoV-2. Sotrovimab does not compete with human ACE2 receptor binding.

Sotrovimab is available as a 500 mg/8 mL (62.5 mg/mL) sterile, preservative-free, clear, colorless or yellow to brown solution to be diluted prior to infusion. Unopened vials of sotrovimab should be stored under refrigerated temperature at 2°C to 8°C (36°F to 46°F). The vials should be kept in the individual original cartons to protect from light. The diluted infusion solution of sotrovimab should be administered immediately. If immediate administration is not possible, store the diluted infusion solution for up to 24 hours at refrigerated temperature (2°C to 8°C [36°F to 46°F]) or up to 4 hours at room temperature (20°C to 25°C [68°F to 77°F]) including transportation and infusion time.

Each carton containing a single treatment course of the authorized sotrovimab will include a single copy each of the following product-specific documents detailing information pertaining to its emergency use (referred to as "authorized labeling")[5]:

- Fact Sheet for Healthcare Providers: Emergency Use Authorization (EUA) of sotrovimab

- Fact Sheet for Patients, Parents and Caregivers: Emergency Use Authorization (EUA) of sotrovimab for the treatment Coronavirus Disease 2019 (COVID-19)

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[4] Benefit of treatment with sotrovimab has not been observed in patients hospitalized due to COVID-19. SARS-CoV-2 monoclonal antibodies may be associated with worse clinical outcomes when administered to hospitalized patients with COVID 19 requiring high flow oxygen or mechanical ventilation.

[5] The authorized labeling for EUA 100 will also be available on GSK's website at www.sotrovimab.com

I have concluded, pursuant to Section 564(d)(2) of the Act, that it is reasonable to believe that the known and potential benefits of sotrovimab, when used for the treatment of COVID-19 and used in accordance with this Scope of Authorization (Section II), outweigh the known and potential risks.

I have concluded, pursuant to Section 564(d)(3) of the Act, based on the totality of scientific evidence available to FDA, that it is reasonable to believe that sotrovimab may be effective for the treatment of COVID-19 when used in accordance with this Scope of Authorization (Section II), pursuant to Section 564(c)(2)(A) of the Act.

Having reviewed the scientific information available to FDA, including the information supporting the conclusions described in Section I above, I have concluded that sotrovimab (as described in this Scope of Authorization (Section II)) meets the criteria set forth in Section 564(c) of the Act concerning safety and potential effectiveness.

The emergency use of your product under an EUA must be consistent with, and may not exceed, the terms of the Authorization, including the Scope of Authorization (Section II) and the Conditions of Authorization (Section III). Subject to the terms of this EUA and under the circumstances set forth in the Secretary of HHS's determination under Section 564(b)(1)(C) described above and the Secretary of HHS's corresponding declaration under Section 564(b)(1), sotrovimab is authorized to treat mild-to-moderate COVID-19 illness in adults and pediatric patients (12 years of age and older weighing at least 40 kg) with positive results of direct SARS-CoV-2 viral testing, who are at high risk for progression to severe COVID-19, including hospitalization or death, as described in the Scope of Authorization (Section II) under this EUA, despite the fact that it does not meet certain requirements otherwise required by applicable federal law.

III. Conditions of Authorization

Pursuant to Section 564 of the Act, I am establishing the following conditions on this authorization:

GSK and Authorized Distributors[6]

A. GSK and authorized distributor(s) will ensure that the authorized labeling (i.e., Fact Sheets) will accompany the authorized sotrovimab as described in Section II of this Letter of Authorization.

B. GSK and authorized distributor(s) will ensure that appropriate storage and cold chain is maintained until the product is delivered to healthcare facilities and/or healthcare providers.

C. GSK and authorized distributor(s) will ensure that the terms of this EUA are made available to all relevant stakeholders (e.g., U.S. government agencies, state and local government authorities, authorized distributors, healthcare facilities, healthcare providers) involved in distributing or receiving authorized sotrovimab. GSK will provide to all relevant stakeholders a copy of this letter of authorization and communicate any

[6] "Authorized Distributor(s)" are identified by GSK as an entity or entities allowed to distribute authorized sotrovimab.

subsequent amendments that might be made to this letter of authorization and its authorized accompanying materials (i.e., Fact Sheets).

D. GSK may request changes to this authorization, including to the authorized Fact Sheets for sotrovimab. Any request for changes to this EUA must be submitted to the Office of Infectious Diseases/Office of New Drugs/Center for Drug Evaluation and Research. Such changes require appropriate authorization prior to implementation.[7]

E. GSK may develop and disseminate instructional and educational materials (e.g., materials providing information on product administration and/or patient monitoring) that are consistent with the authorized emergency use of sotrovimab as described in this letter of authorization and authorized labeling, without FDA's review and concurrence, when necessary to meet public health needs. Any instructional and educational materials that are inconsistent with the authorized labeling for sotrovimab are prohibited. If the Agency notifies GSK that any instructional and educational materials are inconsistent with the authorized labeling, GSK must cease distribution of such instructional and educational materials in accordance with the Agency's notification. Furthermore, as part of its notification, the Agency may also require GSK to issue corrective communication(s).

F. GSK will report to FDA serious adverse events and all medication errors associated with the use of the authorized sotrovimab that are reported to GSK using either of the following options.

Option 1: Submit reports through the Safety Reporting Portal (SRP) as described on the FDA SRP web page.

Option 2: Submit reports directly through the Electronic Submissions Gateway (ESG) as described on the FAERS electronic submissions web page.

Submitted reports under both options should state: "Sotrovimab use for COVID-19 under Emergency Use Authorization (EUA)." For reports submitted under Option 1, include this language at the beginning of the question "Describe Event" for further analysis. For reports submitted under Option 2, include this language at the beginning of the "Case Narrative" field.

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[7] The following types of revisions may be authorized without reissuing this letter: (1) changes to the authorized labeling; (2) non-substantive editorial corrections to this letter; (3) new types of authorized labeling, including new fact sheets; (4) new carton/container labels; (5) expiration dating extensions; (6) changes to manufacturing processes, including tests or other authorized components of manufacturing; (7) new conditions of authorization to require data collection or study; (8) new strengths of the authorized product, new product sources (e.g., of active pharmaceutical ingredient) or of product components. For changes to the authorization, including the authorized labeling, of the type listed in (3), (6), (7), or (8), review and concurrence is required from the Counter-Terrorism and Emergency Coordination Staff/Office of the Center Director/CDER and the Office of Counterterrorism and Emerging Threats/Office of the Chief Scientist.

G. All manufacturing, packaging, and testing sites for both drug substance and drug product will comply with current good manufacturing practice requirements of the FD&C Act section 501(a)(2)(B).

H. GSK will submit information to the Agency within three working days of receipt of any information concerning significant quality problems with distributed drug product of sotrovimab that includes the following:

- Information concerning any incident that causes the drug product or its labeling to be mistaken for, or applied to, another article; or
- Information concerning any microbiological contamination, or any significant chemical, physical, or other change or deterioration in the distributed drug product, or any failure of one or more distributed batches of the product to meet the established specifications.

If a significant quality problem affects unreleased product and may also impact product(s) previously released and distributed, then information should be submitted for all potentially impacted lots.

GSK will include in its notification to the Agency whether the batch, or batches, in question will be recalled. If FDA requests that these, or any other batches, at any time, be recalled, GSK must recall them.

If not included in its initial notification, GSK must submit information confirming that GSK has identified the root cause of the significant quality problems, taken corrective action, and provide a justification confirming that the corrective action is appropriate and effective. GSK must submit this information as soon as possible but no later than 45 calendar days from the initial notification.

I. GSK will manufacture sotrovimab to meet all quality standards and per the manufacturing process and control strategy as detailed in GSK's EUA request. GSK will not implement any changes to the description of the product, manufacturing process, facilities and equipment, and elements of the associated control strategy that assure process performance and quality of the authorized product, without notification to and concurrence by the Agency as described under condition D.

J. GSK will list sotrovimab with a unique NDC under the marketing category of Unapproved Drug-Other. Further, the listing will include each establishment where manufacturing is performed for the drug and the type of operation performed at such establishment.

K. Through a process of inventory control, GSK and authorized distributor(s) will maintain records regarding distribution of the authorized sotrovimab (i.e., lot numbers, quantity, receiving site, receipt date).

L. GSK and authorized distributor(s) will make available to FDA upon request any records maintained in connection with this EUA.

M. GSK will establish a process for monitoring genomic database(s) for the emergence of global viral variants of SARS-CoV-2. A summary of GSK's process should be submitted to the Agency as soon as practicable, but no later than 30 calendar days of the issuance of this letter, and within 30 calendar days of any material changes to such process. GSK will provide reports to the Agency on a monthly basis summarizing any findings as a result of its monitoring activities and, as needed, any follow-up assessments planned or conducted.

N. FDA may require GSK to assess the activity of the authorized sotrovimab against any global SARS-CoV-2 variant(s) of interest (e.g., variants that are prevalent or becoming prevalent that harbor substitutions in the target protein or in protein(s) that interact with the target protein). GSK will perform the required assessment in a manner and timeframe agreed upon by GSK and the Agency. GSK will submit to FDA a preliminary summary report immediately upon completion of its assessment followed by a detailed study report within 30 calendar days of study completion. GSK will submit any relevant proposal(s) to revise the authorized labeling based on the results of its assessment, as may be necessary or appropriate based on the foregoing assessment.

O. GSK shall provide samples as requested of the authorized sotrovimab to the U.S. Department of Health and Human Services (HHS) for evaluation of activity against emerging global viral variants of SARS-CoV-2, including specific amino acid substitution(s) of interest (e.g., variants that are highly prevalent or that harbor substitutions in the target protein) within 5 business days of any request made by HHS. Analyses performed with the supplied quantity of authorized sotrovimab may include, but are not limited to, cell culture potency assays, protein binding assays, cell culture variant assays (pseudotyped virus-like particles and/or authentic virus), and *in vivo* efficacy assays.

P. GSK will submit to FDA all sequencing data assessing sotrovimab, including sequencing of any participant samples from the full analysis population from COMET-ICE that have not yet been completed no later than September 30, 2021. GSK will provide the Agency with a frequency table reporting all substitutions detected for all participants at all available timepoints at a frequency >1%.

Q. GSK will submit to FDA all SARS-CoV-2 viral shedding and viral load data, including quantitation of viral shedding and viral load for any participant samples from the full analysis population from COMET-ICE that have not yet been completed, no later than June 30, 2021.

Healthcare Facilities to Whom the Authorized Sotrovimab Is Distributed and Healthcare Providers Administering the Authorized Sotrovimab

R. Healthcare facilities and healthcare providers will ensure that they are aware of the letter of authorization, and the terms herein, and that the authorized Fact Sheets are made available to healthcare providers and to patients and caregivers, respectively, through appropriate means, prior to administration of sotrovimab.

S. Healthcare facilities and healthcare providers receiving sotrovimab will track serious adverse events that are considered to be potentially attributable to sotrovimab use and must report these to FDA in accordance with the Fact Sheet for Healthcare Providers. Complete and submit a MedWatch form (www.fda.gov/medwatch/report.htm), or Complete and submit FDA Form 3500 (health professional) by fax (1-800-FDA-0178) (these forms can be found via link above). Call 1-800-FDA-1088 for questions. Submitted reports should state, "Sotrovimab use for COVID-19 under Emergency Use Authorization" at the beginning of the question "Describe Event" for further analysis.

T. Healthcare facilities and healthcare providers will ensure that appropriate storage and cold chain is maintained until the product is administered consistent with the terms of this letter.

U. Through a process of inventory control, healthcare facilities will maintain records regarding the dispensed authorized sotrovimab (i.e., lot numbers, quantity, receiving site, receipt date), product storage, and maintain patient information (e.g., patient name, age, disease manifestation, number of doses administered per patient, other drugs administered).

V. Healthcare facilities will ensure that any records associated with this EUA are maintained until notified by GSK and/or FDA. Such records will be made available to GSK, HHS, and FDA for inspection upon request.

Conditions Related to Printed Matter, Advertising and Promotion

W. All descriptive printed matter, advertising, and promotional materials relating to the use of the sotrovimab under this authorization shall be consistent with the authorized labeling, as well as the terms set forth in this EUA, and meet the requirements set forth in section 502(a) and (n) of the Act and FDA implementing regulations. In addition, such materials shall:

- Be tailored to the intended audience.
- Not take the form of reminder advertisements, as that term is described in 21 CFR 202.1(e)(2)(i), 21 CFR 200.200 and 21 CFR 201.100(f).
- Present risk information concurrently in the audio and visual parts of the presentation for advertisements disseminated through media such as radio, television, or telephone communications.
- Be accompanied by the authorized labeling.
- Be submitted to FDA accompanied by Form FDA-2253 at the time of initial dissemination or first use.

If the Agency notifies GSK that any descriptive printed matter, advertising or promotional materials do not meet the terms set forth in conditions W-Y of this EUA, GSK must cease distribution of such descriptive printed matter, advertising, or promotional materials in accordance with the Agency's notification. Furthermore, as part of its notification, the Agency may also require GSK to issue corrective communication(s).

X. No descriptive printed matter, advertising, or promotional materials relating to the use of sotrovimab under this authorization may represent or suggest that sotrovimab is safe or effective when used for the treatment of mild-to-moderate COVID-19 in adults and pediatric patients (12 years of age and older weighing at least 40 kg) with positive results of direct SARS-CoV-2 viral testing, and who are at high risk for progression to severe COVID-19, including hospitalization or death.

Y. All descriptive printed matter, advertising, and promotional material, relating to the use of the sotrovimab clearly and conspicuously shall state that:

- Sotrovimab has not been approved, but has been authorized for emergency use by FDA under an EUA, to treat mild-to-moderate COVID-19 in adults and pediatric patients (12 years of age and older weighing at least 40 kg) with positive results of direct SARS-CoV-2 viral testing, and who are at high risk for progression to severe COVID-19, including hospitalization or death; and

- The emergency use of sotrovimab is only authorized for the duration of the declaration that circumstances exist justifying the authorization of the emergency use of drugs and biological products during the COVID-19 pandemic under Section 564(b)(1) of the Act, 21 U.S.C. § 360bbb-3(b)(1), unless the declaration is terminated or authorization revoked sooner.

IV. Duration of Authorization

This EUA will be effective until the declaration that circumstances exist justifying the authorization of the emergency use of drugs and biological products during the COVID-19 pandemic is terminated under Section 564(b)(2) of the Act or the EUA is revoked under Section 564(g) of the Act.

Sincerely,

--/S/--

RADM Denise M. Hinton
Chief Scientist
Food and Drug Administration

U.S. FOOD & DRUG ADMINISTRATION

June 24, 2021

Hoffmann-La Roche, Ltd.
C/O Genentech, Inc.
Attention: Dhushy Thambipillai
Regulatory Project Management
1 DNA Way, Bldg 45-1
South San Francisco, CA 94080

RE: Emergency Use Authorization 099

Dear Ms. Thambipillai:

This letter is in response to Genentech, Inc.'s (Genentech) request that the Food and Drug Administration (FDA) issue an Emergency Use Authorization (EUA) for the emergency use of Actemra[1] (tocilizumab) for the treatment of coronavirus disease 2019 (COVID-19) in certain hospitalized patients, as described in the Scope of Authorization (Section II) of this letter, pursuant to Section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. §360bbb-3).

On February 4, 2020, pursuant to Section 564(b)(1)(C) of the Act, the Secretary of the Department of Health and Human Services (HHS) determined that there is a public health emergency that has a significant potential to affect national security or the health and security of United States citizens living abroad, and that involves the virus that causes coronavirus disease 2019 (COVID-19).[2] On the basis of such determination, the Secretary of HHS on March 27, 2020, declared that circumstances exist justifying the authorization of emergency use of drugs and biological products during the COVID-19 pandemic, pursuant to Section 564 of the Act (21 U.S.C. 360bbb-3), subject to terms of any authorization issued under that section.[3]

Actemra is a recombinant humanized monoclonal antibody that selectively binds to both soluble and membrane-bound human IL-6 receptors (sIL-6R and mIL-6R) and subsequently inhibits IL-6-mediated signaling through these receptors. Actemra is FDA-approved for several indications[4]; however, Actemra is not approved for the treatment of COVID-19.

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[1] For the purposes of this Letter of Authorization, the use of the tradename, Actemra, is intended to refer to the commercially available Actemra that is in United States distribution under the approved Biologics License Application 125276, only. As discussed further in Section II of this letter, Actemra that is commercially available under this licensure is authorized for emergency use consistent with the terms and conditions of this letter.

[2] U.S. Department of Health and Human Services, *Determination of a Public Health Emergency and Declaration that Circumstances Exist Justifying Authorizations Pursuant to Section 564(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 360bbb-3*. February 4, 2020.

[3] U.S. Department of Health and Human Services, *Declaration that Circumstances Exist Justifying Authorizations Pursuant to Section 564(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 360bbb-3*, 85 FR 18250 (April 1, 2020).

[4] The currently approved labeling for Actemra may be found at: https://www.accessdata.fda.gov/drugsatfda_docs/label/2021/125472s044lbl.pdf.

Based on review of the data from the RECOVERY clinical trial (NCT #04381936), a randomized, open-label, controlled, platform trial; the COVACTA clinical trial (NCT #04320615), a randomized, double-blind, placebo-controlled clinical trial; the EMPACTA clinical trial (NCT #04372186), a randomized, double-blind, placebo-controlled clinical trial; and the REMDACTA clinical trial (NCT #04409262), a randomized, double-blind, placebo-controlled clinical trial, it is reasonable to believe that Actemra may be effective for the treatment of COVID-19 in hospitalized adults and pediatric patients (2 years of age and older) who are receiving systemic corticosteroids and require supplemental oxygen, non-invasive or invasive mechanical ventilation, or extracorporeal membrane oxygenation (ECMO), and when used under the conditions described in this authorization, the known and potential benefits of Actemra outweigh the known and potential risks of such product.

Having concluded that the criteria for issuance of this authorization under Section 564(c) of the Act are met, I am authorizing the emergency use of Actemra for the treatment of COVID-19, as described in the Scope of Authorization section of this letter (Section II) and subject to the terms of this authorization.

I. Criteria for Issuance of Authorization

I have concluded that the emergency use of Actemra for the treatment of COVID-19 when administered as described in the Scope of Authorization (Section II) meets the criteria for issuance of an authorization under Section 564(c) of the Act, because:

1. SARS-CoV-2 can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus;

2. Based on the totality of scientific evidence available to FDA, it is reasonable to believe that Actemra may be effective for the treatment of COVID-19 in hospitalized adults and pediatric patients (2 years of age and older) who are receiving systemic corticosteroids and require supplemental oxygen, non-invasive or invasive mechanical ventilation, or ECMO, and that, when used under the conditions described in this authorization, the known and potential benefits of Actemra outweigh the known and potential risks of such product; and

3. There is no adequate, approved, and available alternative to the emergency use of Actemra for the treatment of COVID-19 in hospitalized adults and pediatric patients (2

years of age and older) who are receiving systemic corticosteroids and require supplemental oxygen, non-invasive or invasive mechanical ventilation, or ECMO.[5,6]

II. Scope of Authorization

I have concluded, pursuant to Section 564(d)(1) of the Act, that the scope of this authorization is limited as follows:

- Actemra will be used only by healthcare providers to treat COVID-19 in hospitalized adults and pediatric patients (2 years of age and older) who are receiving systemic corticosteroids and require supplemental oxygen, non-invasive or invasive mechanical ventilation, or ECMO.
- Actemra may only be administered via intravenous infusion.
- The use of Actemra covered by this authorization must be in accordance with the authorized Fact Sheets.

Product Description

Actemra is supplied in individual single dose vials. Actemra is a recombinant humanized monoclonal antibody that selectively binds to both soluble and membrane-bound human IL-6 receptors (sIL-6R and mIL-6R) and subsequently inhibits IL-6-mediated signaling through these receptors.

Actemra injection is a preservative-free, sterile clear, colorless to pale yellow solution. The authorized product includes commercially available[7] Actemra, which is supplied as 80 mg/4 mL (NDC 50242-135-01), 200 mg/10 mL (NDC 50242-136-01), and 400 mg/20 mL (NDC 50242-137-01) individually packaged 20 mg/mL single-dose vials for further dilution prior to intravenous infusion. Do not use beyond the expiration date on the container or package. Actemra must be refrigerated at 36°F to 46°F (2°C to 8°C). Do not freeze. Protect the vials from light by storage in the original package until time of use.

[5] On October 22, 2020, Veklury (remdesivir) was approved to treat COVID-19 in adults and pediatric patients (12 years of age and older and weighing at least 40 kg) requiring hospitalization. Veklury is a nucleoside ribonucleic acid polymerase inhibitor that has demonstrated antiviral activity against SARS-COV-2. Actemra is a recombinant humanized monoclonal antibody that selectively binds to both soluble and membrane-bound human IL-6 receptors (sIL-6R and mIL-6R) and subsequently inhibits IL-6-mediated signaling through these receptors. Severe COVID-19 infection has been associated with hyperinflammation. In this context, high levels of IL-6, as well as other pro-inflammatory cytokines and inflammatory markers, have been observed in some patients with severe COVID-19 infection. Thus, a product inhibiting IL-6, such as Actemra, may potentially act on the COVID-19-associated inflammatory response. This is distinct from Veklury, which acts as an antiviral agent. We also note that Veklury's FDA-approved indication is for a narrower population than the use authorized for Actemra under this EUA.

[6] No other criteria of issuance have been prescribed by regulation under Section 564(c)(4) of the Act.

[7] Supra at Note 1.

Actemra is authorized for emergency use with the following product-specific information required to be made available to healthcare providers and patients, parents, and caregivers, respectively, through Genentech's website at www.actemrahcp.com/covid-19 (referred to as the "authorized labeling"):

- Fact Sheet for Healthcare Providers: Emergency Use Authorization (EUA) for Actemra
- Fact Sheet for Patients, Parents and Caregivers: Emergency Use Authorization (EUA) of Actemra for Coronavirus Disease 2019 (COVID-19)

I have concluded, pursuant to Section 564(d)(2) of the Act, that it is reasonable to believe that the known and potential benefits of Actemra, when used for the treatment of COVID-19 and used in accordance with this Scope of Authorization (Section II), outweigh the known and potential risks.

I have concluded, pursuant to Section 564(d)(3) of the Act, based on the totality of scientific evidence available to FDA, that it is reasonable to believe that Actemra may be effective for the treatment of COVID-19 when used in accordance with this Scope of Authorization (Section II), pursuant to Section 564(c)(2)(A) of the Act.

Having reviewed the scientific information available to FDA, including the information supporting the conclusions described in Section I above, I have concluded that Actemra (as described in this Scope of Authorization (Section II)) meets the criteria set forth in Section 564(c) of the Act concerning safety and potential effectiveness.

III. Conditions of Authorization

Pursuant to Section 564 of the Act, I am establishing the following conditions on this authorization:

Genentech and Authorized Distributors[8]

A. Genentech and authorized distributor(s) will ensure that Actemra is distributed with the FDA-approved package insert and the authorized labeling (i.e., Fact Sheets) will be made available to healthcare facilities and/or healthcare providers as described in Section II of this Letter of Authorization.

B. Genentech and authorized distributor(s) will ensure that appropriate storage and cold chain is maintained until the product is delivered to healthcare facilities and/or healthcare providers.

C. Genentech and authorized distributor(s) will ensure that the terms of this EUA are made available to all relevant stakeholders (e.g., U.S. government agencies, state and local government authorities, authorized distributors, healthcare facilities, healthcare providers) involved in distributing or receiving Actemra. Genentech will provide to all relevant

[8] "Authorized Distributor(s)" are identified by Genentech as an entity or entities allowed to distribute Actemra for the use authorized in this letter.

stakeholders a copy of this Letter of Authorization and communicate any subsequent amendments that might be made to this Letter of Authorization and its authorized accompanying materials (i.e., Fact Sheets).

D. Genentech may request changes to this authorization, including to the authorized Fact Sheets for Actemra. Any request for changes to this EUA must be submitted to the Division of Pulmonology, Allergy and Critical Care/Office of Immunology and Inflammation/Office of New Drugs/Center for Drug Evaluation and Research (CDER). Such changes require appropriate authorization prior to implementation.[9]

E. Genentech may develop and disseminate instructional and educational materials (e.g., materials providing information on product administration and/or patient monitoring) that are consistent with the authorized emergency use of Actemra as described in this Letter of Authorization and authorized labeling, without FDA's review and concurrence, when necessary to meet public health needs. Any instructional and educational materials that are inconsistent with the authorized labeling for Actemra are prohibited. If the Agency notifies Genentech that any instructional and educational materials are inconsistent with the authorized labeling, Genentech must cease distribution of such instructional and educational materials. Furthermore, as part of its notification, the Agency may also require Genentech to issue corrective communication(s).

F. Genentech will report to FDA serious adverse events and all medication errors associated with the use of Actemra for its authorized use that are reported to Genentech using either of the following options.

Option 1: Submit reports through the Safety Reporting Portal (SRP) as described on the FDA SRP web page.

Option 2: Submit reports directly through the Electronic Submissions Gateway (ESG) as described on the FAERS electronic submissions web page.

Submitted reports under both options should state: "Actemra use for COVID-19 under Emergency Use Authorization (EUA)." For reports submitted under Option 1, include this language at the beginning of the question "Describe Event" for further analysis. For reports submitted under Option 2, include this language at the beginning of the "Case Narrative" field.

[9] The following types of revisions may be authorized without reissuing this letter: (1) changes to the authorized labeling; (2) non-substantive editorial corrections to this letter; (3) new types of authorized labeling, including new fact sheets; (4) new carton/container labels; (5) expiration dating extensions; (6) changes to manufacturing processes, including tests or other authorized components of manufacturing; (7) new conditions of authorization to require data collection or study; (8) new strengths of the authorized product, new product sources (e.g., of active pharmaceutical ingredient) or of product components. For changes to the authorization, including the authorized labeling, of the type listed in (3), (6), (7), or (8), review and concurrence is required from the Counter-Terrorism and Emergency Coordination Staff/Office of the Center Director/CDER and the Office of Counterterrorism and Emerging Threats/Office of the Chief Scientist.

G. All manufacturing, packaging, and testing sites for both drug substance and drug product will comply with current good manufacturing practice requirements of Section 501(a)(2)(B) of the Act.

H. Genentech will submit information to the Agency within three working days of receipt of any information concerning significant quality problems with drug product distributed under this emergency use authorization for Actemra that includes the following:

- Information concerning any incident that causes the drug product or its labeling to be mistaken for, or applied to, another article; or
- Information concerning any microbiological contamination, or any significant chemical, physical, or other change or deterioration in the distributed drug product, or any failure of one or more distributed batches of the product to meet the established specifications.

If a significant quality problem affects unreleased product and may also impact product(s) previously released and distributed, then information should be submitted for all potentially impacted lots.

Genentech will include in its notification to the Agency whether the batch, or batches, in question will be recalled.

If not included in its initial notification, Genentech must submit information confirming that Genentech has identified the root cause of the significant quality problems, taken corrective action, and provide a justification confirming that the corrective action is appropriate and effective. Genentech must submit this information as soon as possible but no later than 45 calendar days from the initial notification.

I. Genentech will manufacture Actemra to meet all quality standards and per the manufacturing process and control strategy as detailed in Genentech's EUA request. Genentech will not implement any changes to the description of the product, manufacturing process, facilities and equipment, and elements of the associated control strategy that assure process performance and quality of the authorized product, without notification to and concurrence by the Agency as described under condition D.

J. Through a process of inventory control, Genentech and authorized distributor(s) will maintain records regarding distribution of Actemra (i.e., lot numbers, quantity,receiving site, receipt date).

K. Genentech and authorized distributor(s) will make available to FDA upon request any records maintained in connection with this EUA.

Healthcare Facilities to Whom Actemra Is Distributed and Healthcare Providers Administering Actemra

L. Healthcare facilities and healthcare providers will ensure that they are aware of the Letter of Authorization, and the terms herein, and that the authorized Fact Sheets are made available to healthcare providers and to patients, parents, and caregivers, respectively, through appropriate means, prior to administration of Actemra.

M. Healthcare facilities and healthcare providers receiving Actemra will track serious adverse events that are considered to be potentially attributable to Actemra use and must report these to FDA in accordance with the Fact Sheet for Healthcare Providers. Complete and submit a MedWatch form (www.fda.gov/medwatch/report.htm), or complete and submit FDA Form 3500 (health professional) by fax (1-800-FDA-0178) (these forms can be found via link above). Call 1-800-FDA-1088 for questions. Submitted reports should state, "Actemra use for COVID-19 under Emergency Use Authorization" at the beginning of the question "Describe Event" for further analysis. A copy of the completed FDA Form 3500 should also be provided to Genentech per the instructions in the authorized labeling.

N. Healthcare facilities and healthcare providers will ensure that appropriate storage and cold chain is maintained until the product is administered consistent with the terms of this letter and the authorized labeling.

O. Through a process of inventory control, healthcare facilities will maintain records regarding the dispensing and administration of Actemra for the use authorized in this letter (i.e., lot numbers, quantity, receiving site, receipt date), product storage, and maintain patient information (e.g., patient name, age, disease manifestation, number of doses administered per patient, other drugs administered).

P. Healthcare facilities will ensure that any records associated with this EUA are maintained until notified by Genentech and/or FDA. Such records will be made available to Genentech, HHS, and FDA for inspection upon request.

Conditions Related to Printed Matter, Advertising, and Promotion

Q. All descriptive printed matter, advertising, and promotional materials relating to the use of Actemra under this authorization shall be consistent with the authorized labeling, as well as the terms set forth in this EUA, and meet the requirements set forth in Section 502(a) and (n) of the Act, as applicable, and FDA implementing regulations. References to "approved labeling", "permitted labeling" or similar terms in these requirements shall be understood to refer to the authorized labeling for the use of Actemra under this authorization. In addition, such materials shall:

- Be tailored to the intended audience.
- Not take the form of reminder advertisements, as that term is described in 21 CFR 202.1(e)(2)(i), 21 CFR 200.200 and 21 CFR 201.100(f).
- Present the same risk information relating to the major side effects and contraindications concurrently in the audio and visual parts of the presentation for advertising and promotional materials in audio-visual format.

- Be accompanied by the authorized labeling, if the promotional materials are not subject to Section 502(n) of the Act.
- Be submitted to FDA accompanied by Form FDA-2253 at the time of initial dissemination or first use.

If the Agency notifies Genentech that any descriptive printed matter, advertising or promotional materials do not meet the terms set forth in conditions Q-S of this EUA, Genentech must cease distribution of such descriptive printed matter, advertising, or promotional materials in accordance with the Agency's notification. Furthermore, as part of its notification, the Agency may also require Genentech to issue corrective communication(s).

R. No descriptive printed matter, advertising, or promotional materials relating to the use of Actemra under this authorization may represent or suggest that Actemra is safe or effective when used for the treatment of COVID-19 in hospitalized adults and pediatric patients (2 years of age and older) who are receiving systemic corticosteroids and require supplemental oxygen, non-invasive or invasive mechanical ventilation, or ECMO.

S. All descriptive printed matter, advertising, and promotional material, relating to the use of Actemra under this authorization clearly and conspicuously shall state that:

- Actemra has not been approved, but has been authorized for emergency use by FDA under an EUA, to treat COVID-19 in hospitalized adults and pediatric patients (2 years of age and older) who are receiving systemic corticosteroids and require supplemental oxygen, non-invasive or invasive mechanical ventilation, or ECMO; and

- The emergency use of Actemra is only authorized for the duration of the declaration that circumstances exist justifying the authorization of the emergency use of drugs and biological products during the COVID-19 pandemic under Section 564(b)(1) of the Act, 21 U.S.C. § 360bbb-3(b)(1), unless the declaration is terminated or authorization revoked sooner.

IV. Duration of Authorization

This EUA will be effective until the declaration that circumstances exist justifying the authorization of the emergency use of drugs and biological products during the COVID-19 pandemic is terminated under Section 564(b)(2) of the Act or the EUA is revoked under Section 564(g) of the Act.

Sincerely,

--/S/--

RADM Denise M. Hinton
Chief Scientist
Food and Drug Administration

Dated: July 30, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2021–16705 Filed 8–4–21; 8:45 am]

BILLING CODE 4164–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting 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 cooperative agreement applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the cooperative agreement applications, the disclosure of which would

constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel; CTSA Review.

Date: September 9, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1037, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Victor Henriquez, Ph.D., Scientific Review Officer, National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1037, Bethesda, MD 20817, 301–435–0813, *henriquv@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: July 30, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–16668 Filed 8–4–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Draft NTP Developmental and Reproductive Toxicity Technical Reports on 2-Hydroxy-4-methoxybenzophenone and 2-Ethylhexyl p-Methoxycinnamate; Availability of Documents; Request for Comments; Notice of Peer-Review Meeting

AGENCY: National Institutes of Health, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Division of the National Toxicology Program (DNTP) announces the availability of the Draft NTP Developmental and Reproductive Toxicity Technical Reports on 2-hydroxy-4-methoxybenzophenone and 2-ethylhexyl p-methoxycinnamate scheduled for peer review. The peer-review meeting will be held remotely and will be available to the public for veiwing. Oral and written comments will be accepted; registration is required to access the webcast and to present oral comments.

DATES: Meeting: October 14, 2021, 10 a.m. Eastern Daylight Time (EDT) to adjournment. The meeting may end earlier or later than 5:00 p.m. EDT.

Document Availability: The two draft NTP reports will be available by August 16, 2021 at *https://ntp.niehs.nih.gov/go/36051.*

Written Public Comment Submissions: Deadline is September 30, 2021.

Registration for Oral Comments: Deadline is October 7, 2021.

Registration to View the Webcast: Deadline is October 14, 2021.

ADDRESSES: Meeting web page: The draft reports, preliminary agenda, registration, and other meeting materials will be available at *https://ntp.niehs.nih.gov/go/36051.* Webcast: The URL for viewing the peer-review meeting will be provided to registrants.

FOR FURTHER INFORMATION CONTACT: Email *NTP-Meetings@icf.com.* Dr. Sheena Scruggs, NIEHS/DNTP, is the Designated Federal Official. Phone: (984) 287–3355. Email: *sheena.scruggs@nih.gov.*

SUPPLEMENTARY INFORMATION:

Meeting Attendance Registration: The meeting is available for viewing by the public with time set aside for oral public comment. Registration to view the webcast is by October 14, 2021, at *https://ntp.niehs.nih.gov/go/36051.* The URL for the webcast will be provided in the email confirming registration. Individuals with disabilities who need accommodation to view the webcast should contact Canden Byrd by phone: (919) 293–1660 or email: *NTP-Meetings@icf.com.* TTY users should contact the Federal TTY Relay Service at (800) 877–8339. Requests should be made at least five business days in advance of the event.

Request for Comments: DNTP invites written and oral public comments on the draft reports that address scientific or technical issues. Guidelines for public comments are available at *https://ntp.niehs.nih.gov/ntp/about_ntp/guidelines_public_comments_508.pdf.*

The deadline for submission of written comments is September 30, 2021, to enable review by the peer-review panel and DNTP staff prior to the meeting. Written public comments should be submitted through the meeting website at *https://ntp.niehs.nih.gov/go/36051.* Persons submitting written comments should include name, affiliation, mailing address, phone, email, and sponsoring organization (if any). Written comments received in response to this notice will be posted on the NTP website and the submitter will be identified by name, affiliation, and sponsoring organization (if any). Comments that address scientific/technical issues will be forwarded to the peer-review panel and DNTP staff prior to the meeting.

Oral public comment at this meeting is welcome, with time set aside for the presentation of oral comments on the draft reports. The agenda will allow for two oral public comment periods—one comment period per report (up to 6 commenters, up to 5 minutes per speaker). Persons wishing to make an oral comment are required to register online at *https://ntp.niehs.nih.gov/go/36051* by October 7, 2021. Registration is on a first-come, first served basis. Each organization is allowed one time slot per report. The access number for the teleconference line will be provided to registrants by email prior to the meeting. Commenters will be notified approximately one week before the peer-review meeting about the actual time allotted per speaker.

If possible, oral public commenters should send a copy of their slides and/or statement or talking points to Canden Byrd by email: *NTP-Meetings@icf.com* by October 7, 2021. Written statements can supplement and may expand the oral presentation.

Meeting Materials: The draft NTP reports and preliminary agenda will be available on the NTP website at *https://ntp.niehs.nih.gov/go/36051* prior to the meeting. NTP expects that the draft reports should be available on the website by August 16, 2021. Additional information will be posted when available or may be requested in hardcopy from Canden Byrd by phone: (919) 293–1660 or email: *NTP-Meetings@icf.com.* Individuals are encouraged to access the meeting web page to stay abreast of the most current information regarding the meeting.

Following the meeting, a report of the peer review will be prepared and made available on the NTP website.

Background Information on NTP Peer-Review Panels: NTP panels are technical, scientific advisory bodies established on an ''as needed'' basis to provide independent scientific peer review and advise NTP on agents of public health concern, new/revised toxicological test methods, or other issues. These panels help ensure transparent, unbiased, and scientifically rigorous input to the program for its use in making credible decisions about human hazard, setting research and testing priorities, and providing information to regulatory agencies about alternative methods for toxicity screening. DNTP welcomes nominations of scientific experts for upcoming panels. Scientists interested in serving on an NTP panel should provide their name and best form of contact to

Canden Byrd by email: *NTP-Meetings@icf.com.*

The authority for NTP panels is provided by 42 U.S.C. 217a; section 222 of the Public Health Service Act, as amended. The panel is governed by the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

This peer review is being conducted by a panel via webcast. Peer-review of future draft reports will be conducted in accordance with Department of Health and Human Services peer-review policies (*https://aspe.hhs.gov/hhs-information-quality-peer-review*) and Office of Management and Budget's Final Information Quality Bulletin for Peer Review (70 FR 2664, January 4, 2005).

Dated: July 30, 2021.

Brian R. Berridge,

Associate Director, National Toxicology Program.

[FR Doc. 2021–16734 Filed 8–4–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2021–0238]

Consolidation of Redundant Coast Guard Boat Stations; Extension of Comment Period

AGENCY: Coast Guard, DHS.

ACTION: Extension of public comment period.

SUMMARY: The Coast Guard is extending the deadline for the submission of public comments in response to its June 9, 2021 request for comments regarding the consolidation of redundant Coast Guard boat stations.

DATES: The deadline for the request for comments published June 9, 2021, at 86 FR 30612, is extended. Public comments must be submitted no later than 11:59 p.m. Eastern Time on September 22, 2021.

ADDRESSES: You may submit comments identified by docket number USCG–2021–0238 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section in the original Request for Comments for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: For information about this document call or email Todd Aikins, Coast Guard Office of Boat Forces; telephone 202–372–2463, email *todd.r.aikins@uscg.mil.*

SUPPLEMENTARY INFORMATION: On June 9, 2021, the Coast Guard published a request for comments regarding the consolidation of certain redundant Coast Guard boat stations. The Coast Guard solicited comments specifically on the consolidation of Stations-Small Scituate, MA; Holland, MI; North Superior, MN; and Beach Haven, NJ. The public comment period was initially set to expire on August 3, 2021, but due to the disruption caused by the global pandemic and requests by local partners for additional time, the Coast Guard believes it would be beneficial to extend the deadline for public comments to ensure the Coast Guard has the benefit of a complete record. The Coast Guard is therefore extending the deadline to submit public comments to no later than 11:59 Eastern Time on September 22, 2021.

This notice is issued under authority of 5 U.S.C. 552(a).

Dated: August 2, 2021.

James B. Rush,

Captain, U.S. Coast Guard, Chief, Office of Boat Forces.

[FR Doc. 2021–16760 Filed 8–4–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0016]

Meetings To Implement Pandemic Response Voluntary Agreement under Section 708 of the Defense Production Act; Correction

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

ACTION: Announcement of meetings; correction.

SUMMARY: The Federal Emergency Management Agency (FEMA) published a document in the **Federal Register** of July 2, 2021, concerning an announcement of meetings to implement the Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic. The document incorrectly listed certain meeting dates.

FOR FURTHER INFORMATION CONTACT: Robert Glenn, Office of Business, Industry, Infrastructure Integration, via email at *OB3I@fema.dhs.gov* or via phone at (202) 212–1666.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of July 2, 2021, in FR Doc. 2021–14251 on page 35309, in the second column, correct the **DATES** caption to read:

DATES: The schedule for these meetings is as follows:

- The first meeting took place on Tuesday, June 22, 2021, from 2 to 4 p.m. Eastern Time (ET).
- The second meeting took place on Wednesday, June 23, 2021, from 11 a.m. to 1 p.m. ET.
- The third meeting will take place on Tuesday, July 20, 2021, from 11 a.m. to 1 p.m. ET.
- The fourth meeting will take place on Thursday, July 22, 2021, from 2 to 4 p.m. ET.
- The fifth meeting will take place on Tuesday, August 17, 2021, from 11 a.m. to 1 p.m. ET.
- The sixth meeting will take place on Thursday, August 19, 2021, from 2 to 4 p.m. ET.

Dated: August 2, 2021.

Shabnaum Q. Amjad,

Deputy Associate Chief Counsel, Regulatory Affairs Division, Office of Chief Counsel, Federal Emergency Management Agency.

[FR Doc. 2021–16708 Filed 8–4–21; 8:45 am]

BILLING CODE 9111–19–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

[OMB Control Number 1653–0043]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Electronic Funds Transfer Waiver Request

AGENCY: U.S. Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance.

DATES: Comments are encouraged and will be accepted until October 4, 2021.

ADDRESSES: All submissions received must include the OMB Control Number

1653–0043 in the body of the correspondence, the agency name and Docket ID ICEB–2009–0005. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

(1) *Online.* Submit comments via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number ICEB–2009–0005.

FOR FURTHER INFORMATION CONTACT: If you have questions related to this collection, call or email KaJuana Edwards, Obligation Management Branch, (214) 915–6029, email *kajuana.edwards@ice.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comment

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Electronic Funds Transfer Waiver Request.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form 10–002; U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal Government. Section 404(b) of the Immigration and Nationality Act (8 U.S.C. 1101 note) provides for the reimbursement to States and localities for assistance provided in meeting an immigration emergency. This collection of information allows for State or local governments to request reimbursement.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 650 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 350 annual burden hours.

Dated: August 2, 2021.

Scott Elmore,

PRA Clearance Officer.

[FR Doc. 2021–16750 Filed 8–4–21; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[212A2100DD/AAKC001030/A0A501010.999900 253G]

Not Invisible Act Joint Commission on Reducing Violent Crime Against Indians

AGENCY: Office of the Assistant Secretary—Indian Affairs, Interior.

ACTION: Notice of call for nominations and request for comments for non-Federal Commission members.

SUMMARY: This notice requests public nominations for the U.S. Department of the Interior (DOI)'s Joint Commission on Reducing Violent Crime Against Indians (Commission) as outlined in Section 4 of the Not Invisible Act of 2019. The Commission will develop recommendations for the Secretary of the Interior (Secretary) and the Attorney General on actions the Federal Government can take to increase intergovernmental coordination to identify and combat violent crime on Indian lands and against Indians. The DOI is soliciting comments and nominations for qualified individuals to serve as non-Federal Commission members.

DATES: Comments and nominations for non-Federal Commission members must be submitted no later than September 20, 2021.

ADDRESSES: Send written comments and nominations to Regina Gilbert, by any of the following methods:

- *Preferred method Email to: consultation@bia.gov;*
- *Mail, hand-carry or use an overnight courier service to:* Attn. Jason O'Neal, Director, Office of Justice Services U.S. Department of the Interior, Bureau of Indian Affairs, 1849 C Street NW, MS–3662–MIB, Washington, DC 20240.

Information is also available at *www.bia.gov/as-ia/nia.*

FOR FURTHER INFORMATION CONTACT: Please email inquiries to *Heidi_Todacheene@ios.doi.gov;* and please add the following language in the subject line: ''Inquiry re NIAC fr [add org/tribe/name here]''.

SUPPLEMENTARY INFORMATION:

I. Background

Congress enacted the *Not Invisible Act of 2019* (Act), Public Law 116–166, 134 Stat. 766 (2020), to increase intergovernmental coordination to identify and combat violent crime within Indian lands and against Indians. Section 4 of the Act requires that the Secretary of the Interior (Secretary), in coordination with the United States Attorney General, establish and appoint commission members (both Federal and non-Federal) to a Joint Commission on Reducing Violent Crime Against Indians (Commission) to develop recommendations on actions the Federal Government can take to identify, coordinate, and combat violent crime on Indian lands and against Indians.

There are many Federal programs tasked with addressing violent crime. However, the agencies that operate these programs do not have an overarching strategy to properly deploy these resources in Indian Country and urban Indian communities. Program implementation often takes place without considering the unique needs of Native communities in this context. The Act addresses these concerns by providing an opportunity for the Federal Government to improve its efforts to combat the growing crisis of murder, trafficking, and the disappearance of Indigenous men and women.

II. Work of the Commission

Section 4(c)(2)(A) of the Act requires the Commission to develop recommendations on actions the Federal Government can take to help combat violent crime and within Indian lands and of Indians, including recommendations for:

(i) Identifying, reporting, and responding to instances of missing persons, murder, and human trafficking on Indian lands and of Indians;

(ii) legislative and administrative changes necessary to use programs, properties, or other resources funded or operated by the DOI and Department of Justice to combat the crisis of missing or murdered Indians and human trafficking on Indian lands and of Indians;

(iii) tracking and reporting data on instances of missing persons, murder, and human trafficking on Indian lands and of Indians;

(iv) addressing staff shortages and open positions within relevant law enforcement agencies, including issues related to the hiring and retention of law enforcement officers;

(v) coordinating Tribal, State, and Federal resources to increase prosecution of murder and human trafficking offenses on Indian lands and of Indians; and

(vi) increasing information sharing with Tribal governments on violent crime investigations and prosecutions in Indian lands that were terminated or declined.

The Act requires the Commission to submit all recommendations to the Secretary of the Interior, the Attorney General, the Senate Committees on the Judiciary and on Indian Affairs, the House Committees on the Judiciary and on Natural Resources and make their recommendations publicly available. For more information see *https://www.bia.gov/as-ia/nia.*

III. Commission Membership, Responsibilities and Criteria

A. Commission Membership

In accordance with the Act, the Commission is exempt from the Federal Advisory Committee Act (FACA) requirements.

The Secretary will coordinate with the Attorney General to establish the Commission and appoint members. The Commission must be composed of a minimum of 27 qualified Federal and non-Federal members who represent diverse experiences, backgrounds, geography, and Tribes of diverse sizes who are able to provide balanced points of view on the duties of the Commission. The Secretary is seeking non-Federal nominations for representatives to serve on the Commission who represent one or more of the interests in Section C and who fulfill the additional skills and expertise listed in the same section.

In making membership decisions, the Secretary will consider whether the interest represented by a nominee will be affected significantly by the final products of the Commission, which may include report(s) and/or proposed recommendations; whether that interest is already adequately represented by other nominees; and whether the potential addition would adequately represent that interest.

Federally registered lobbyists are ineligible to serve on all FACA and non-FACA boards, committees, or councils in an individual capacity. The term ''individual capacity'' refers to individuals who are appointed to exercise their own individual best judgment on behalf of the government, such as when they are designated Special Government Employees, rather than being appointed to represent a particular interest.

B. Commission Member Responsibilities

The Commission is expected to meet approximately 3–5 times and each meeting is expected to last multiple hours for a consecutive 2–3 days each. The initial meeting may be held by teleconference and/or web conference; later meetings may be held either virtually or in person, or a mixture of both. Between meetings, Commission members are expected to participate in work group or subcommittee work via conference call, email and/or virtually. The Commission's work is expected to occur over the course of 18 months as identified in the Act. The Commission may hold hearings, meet and act at times and places, take testimony, and receive evidence as the Commission considers to be advisable to carry out its duties.

Because of the scope and complexity of the tasks at hand, Commission members must be able to invest considerable time and effort in the process. Commission members must be able to attend all Commission meetings, hearings, work on Commission work groups, consult with their constituencies between Commission meetings, and negotiate in good faith toward a consensus on issues before the Commission. Because of the complexity of the issues under consideration, as well as the need for continuity, the Secretary reserves the right to replace any member who is unable to participate in the Commission's meetings, hearings, and work group meetings with an alternate member.

The DOI commits to pay the reasonable travel and per diem expenses of Commission members, if appropriate, to attend in-person meetings and hearings.

C. Membership Criteria

Prospective members need to have a strong capacity for teamwork, tracking relevant Federal Government programs and policy making procedures, and coordinating with and acting on behalf of the entity they represent. Prospective members should demonstrate relevant expertise, and a commitment and motivation to address the issues related to missing, murdered and human trafficking of Indians, especially at the local level. Because of the significant time commitment for this Commission, nominees should not be a current member of an existing Commission, Task Force, or Advisory Group on a similar or related topic.

Non-Federal members of the Commission are comprised of the categories below. Specific criteria for each category are provided.

Category	Criteria
Tribal law enforcement.	• Work for a Tribe that has experience in missing, murdered or human trafficking with or without a Tribal resolution. • Demonstrated understanding of the procedural requirements to investigate missing and murder [cases] *e.g.,* how and when to interview, and report writing. • Demonstrated experience in gathering and preserving evidence in missing persons cases. • Demonstrated experience working with FBI or local law enforcement on missing persons cases.
State and local law enforcement	• In close proximity to Indian lands. • A letter of recommendation from a local Indian Tribe. • Be from State, county, or local law enforcement with cross-deputization experience working with local Tribe(s). • Nominees in this category should represent a mix of people from P.L. 280 states and from non-P.L. 280 states.
Tribal judge	• Experience in cases related to missing persons, murder, or trafficking. • Experience working with culturally relevant wellness and/or family courts and/or victim services.

Category	Criteria
Not fewer than 3 Indian Tribes including 1 Indian Tribe in Alaska.	• Demonstrate thought processes that explore the implications of their decisions on the families and/or reflect the cultural relevance and complexity of the issues before ruling. • Diverse geographic locations. Including urban and rural representation (including Alaska).
Not fewer than 2 health care and mental health practitioners with experience working with Indian survivors of trafficking and sexual assault..	• Selected from nominations submitted by the Indian Tribe. • Demonstrated substantive expertise in the issues. • Nominees in this category should be a mix of elected tribal leadership, council members, social services, victim services, wellness and/or family courts. • Letter of recommendation from a local Tribal chair or Tribal law enforcement officer.
Not fewer than 3 national, regional, or urban Indian organizations focused on violence against women and children on Indian lands or against Indians.	• Demonstrate an understanding of the importance of cultural relevancy. • Demonstrate an understanding of the Indian Health Service, or clinical health services on tribal lands. • National, regional, or urban organization.
At least 2 Indian survivors of human trafficking	• Have established track record with a history of funding *e.g.,* existed for 10 years or longer. • A letter from an individual or entity who can validate they are survivors. • A letter from a federally recognized Tribe is a plus but not required. • Nominees in this category should be geographically diverse including urban/rural diversity.
At least 2 family members of missing Indian people.	• A letter from an individual or entity who can validate they have a missing family member. • A letter from a federally recognized Tribe is a plus but not required. • Nominees in this category should be geographically diverse including urban/rural diversity.
At least 2 family members of murdered Indian people.	• A letter from an individual or entity who can validate they have a murdered family member. • A letter from a federally recognized Tribe is a plus but not required. • Nominees in this category should be geographically diverse including urban/rural diversity.

IV. Call for Non-Federal Commission Member Nominations

Under Section 4, the Act requires that the Commission be comprised of only Federal and non-Federal representatives. Specifically, nominations for non-Federal primary members who can fulfill the obligations of membership that are listed above are requested. Qualified alternate members will be identified from this pool of nominees.

The Secretary, in coordination with the Attorney General, will consider non-Federal employee nominations for representatives only if they are nominated through the process identified in this notice. The Secretary will not consider any nominations that are received in any other manner. The Secretary will not consider nominations for Federal representatives; only the Secretary, in coordination with the Attorney General, may appoint Federal employees to the Commission.

Nominations must include the following information about each nominee:

1. The nominee's name, contact information, geographic location, and Tribal affiliation.

2. A resume that describes the nominees' qualifications for specific membership category(ies). Please refer to the membership criteria stated in this notice.

3. A personal statement of the reasons why the nominee wants to serve on the Commission including examples of work or professional experience at the local, Tribal or urban community level, and/or regionally, nationally.

4. A statement committing to the time to contribute meaningfully to Commission deliberations including work groups.

5. Any additional comments, including culturally relevant skills and personal experience, that could help contribute to the Commission's deliberations.

6. Where specified in the membership criteria, one or more letters of recommendation.

To be considered, nominations must be received by the close of business on the date listed in the **DATES** section, at the location indicated in the **ADDRESSES** section.

V. Comments

You may submit your comments by any one of the methods listed in the **ADDRESSES** section of this notice. 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 the Department in your comment to withhold your personal identifying information from public view, the Department cannot guarantee that we will be able to do so.

Bryan Newland,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2021–16699 Filed 8–4–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[212A2100DD/AAKC001030/A0A501010.999900 253G]

Rate Adjustments for Indian Irrigation Projects

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) owns or has an interest in irrigation projects located on or associated with various Indian reservations throughout the United States. We are required to establish irrigation assessment rates to recover the costs to administer, operate, maintain, and rehabilitate these projects. We are notifying you that we have adjusted the irrigation assessment rates at several of our irrigation projects and facilities to

reflect current costs of administration, operation, maintenance, and rehabilitation.

DATES: The irrigation assessment rates are current as of January 1, 2021.

FOR FURTHER INFORMATION CONTACT: For details about a particular BIA irrigation project or facility, please use the tables in the **SUPPLEMENTARY INFORMATION** section to identify contacts at the regional or local office at which the project or facility is located.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rate Adjustment was published in the **Federal Register** on May 10, 2021 (86 FR 24884) to propose adjustments to the irrigation assessment rates at several BIA irrigation projects. The public and interested parties were provided an opportunity to submit written comments during the 60-day period that ended July 9, 2021.

Did BIA defer or change any proposed rate increases?

No. BIA did not defer or change any proposed rate increases.

Did BIA receive any comments on the proposed irrigation assessment rate adjustments?

No. BIA did not receive any comments on the proposed irrigation assessment rate adjustments.

Does this notice affect me?

This notice affects you if you own or lease land within the assessable acreage of one of our irrigation projects or if you have a carriage agreement with one of our irrigation projects.

Where can I get information on the regulatory and legal citations in this notice?

You can contact the appropriate office(s) stated in the tables for the irrigation project that serves you, or you can use the internet site for the Government Publishing Office at *www.gpo.gov.*

What authorizes you to issue this notice?

Our authority to issue this notice is vested in the Secretary of the Interior (Secretary) by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583; 25 U.S.C. 385). The Secretary has in turn delegated this authority to the Assistant Secretary—Indian Affairs under Part 209, Chapter 8.1A, of the Department of the Interior's Departmental Manual.

Whom can I contact for further information?

The following tables are the regional and project/agency contacts for our irrigation facilities.

Project name	Project/agency contacts
Northwest Region Contacts	
Bryan Mercier, Regional Director, Bureau of Indian Affairs, Northwest Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4169, Telephone: (503) 231–6702.	
Flathead Indian Irrigation Project	Larry Nelson, Acting Irrigation Project Manager, P.O. Box 40, Pablo, MT 59855, Telephone: (406) 745–2661.
Fort Hall Irrigation Project	David Bollinger, Irrigation Project Manager, Building #2 Bannock Avenue, Fort Hall, ID 83203–0220, Telephone: (208) 238–1992.
Wapato Irrigation Project	Pete Plant, Project Administrator, 413 South Camas Avenue, Wapato, WA 98951–0220, Telephone: (509) 877–3155.
Rocky Mountain Region Contacts	
Susan Messerly, Regional Director, Bureau of Indian Affairs, Rocky Mountain Regional Office, 2021 4th Avenue North, Billings, MT 59101, Telephone: (406) 247–7943.	
Blackfeet Irrigation Project	Thedis Crowe, Superintendent, Greg Tatsey, Irrigation Project Manager, P.O. Box 880, Browning, MT 59417, Telephones: (406) 338–7544 Superintendent, (406) 338–7519 Irrigation Project Manager.
Crow Irrigation Project	Clifford Serawop, Superintendent, Jim Gappa, Acting Irrigation Project Manager (BIA), (Project operation & maintenance performed by Water Users Association), P.O. Box 69, Crow Agency, MT 59022, Telephones: (406) 638–2672 Superintendent, (406) 247–7998 Acting Irrigation Project Manager.
Fort Belknap Irrigation Project	Mark Azure, Superintendent, Jim Gappa, Acting Irrigation Project Manager (BIA), (Project operation & maintenance contracted to Fort Belknap Indian Community under PL 93–638), 158 Tribal Way, Suite B, Harlem, MT 59526, Telephones: (406) 353–2901 Superintendent, (406) 247–7998 Acting Irrigation Project Manager, (406) 353–8466 Tribal Irrigation Office.
Fort Peck Irrigation Project	Anna Eder, Superintendent, Jim Gappa, Acting Irrigation Project Manager (BIA), (Project operation & maintenance performed by Fort Peck Water Users Association), P.O. Box 637, Poplar, MT 59255, Telephones: (406) 768–5312 Superintendent, (406) 247–7998 Acting Irrigation Project Manager, (406) 653–1752 Lead ISO—Huber Wright.
Wind River Irrigation Project	Leslie Shakespeare, Superintendent, Jim Gappa, Acting Irrigation Project Manager (BIA), (Project operation & maintenance for Little Wind, Johnstown, and Lefthand Units contracted to Tribes under PL 93–638; Little Wind-Ray and Upper Wind Units operation & maintenance performed by Ray Canal, A Canal, and Crowheart Water Users Associations), P.O. Box 158, Fort Washakie, WY 82514, Telephones: (307) 332–7810 Superintendent, (406) 247–7998 Acting Irrigation Project Manager.
Southwest Region Contacts	
Patricia L. Mattingly, Regional Director, Bureau of Indian Affairs, Southwest Regional Office, 1001 Indian School Road NW, Albuquerque, NM 87104, Telephone: (505) 563–3100.	
Pine River Irrigation Project	Priscilla Bancroft, Superintendent, Vickie Begay, Irrigation Project Manager, P.O. Box 315, Ignacio, CO 81137–0315, Telephones: (970) 563–4511 Superintendent, (970) 563–9484 Irrigation Project Manager.

Project name	Project/agency contacts
Western Region Contacts	
Bryan Bowker, Regional Director, Bureau of Indian Affairs, Western Regional Office, 2600 North Central Avenue, 4th Floor Mailroom, Phoenix, AZ 85004, Telephone: (602) 379–6600.	
Colorado River Irrigation Project	Davetta Ameelyenah, Superintendent, Gary Colvin, Irrigation Project Manager, 12124 1st Avenue, Parker, AZ 85344, Telephones: (928) 669–7111 Superintendent, (928) 662–4392 Irrigation Project Manager.
Duck Valley Irrigation Project	Joseph McDade, Superintendent, (Project operation & maintenance compacted to Shoshone-Paiute Tribes under PL 93–638), 2719 Argent Avenue, Suite 4, Gateway Plaza, Elko, NV 89801, Telephones: (775) 738–5165 Superintendent, (208) 759–3100 Tribal Office.
Yuma Project, Indian Unit	Denni Shields, Superintendent, (Bureau of Reclamation (BOR) owns the Project and is responsible for operation & maintenance), 256 South Second Avenue, Suite D, Yuma, AZ 85364, Telephones: (928) 782–1202 Superintendent, (928) 343–8100 BOR Area Office Manager.
San Carlos Irrigation Project (Indian Works and Joint Works).	Ferris Begay, Project Manager (BIA), Kyle Varvel, Acting Supervisory Civil Engineer (BIA), (Portions of Indian Works operation & maintenance compacted to Gila River Indian Community under PL 93–638), 13805 North Arizona Boulevard, Coolidge, AZ 85128, Telephones: (520) 723–6225 Project Manager, (520) 562–3372 Acting Supervisory Civil Engineer, (520) 562–6720 Gila River Indian Irrigation & Drainage District.
Uintah Irrigation Project	Antonio Pingree, Superintendent, Ken Asay, Irrigation System Manager (BIA), (Project operation & maintenance performed by Uintah Indian Irrigation Project Operation and Maintenance Company), P.O. Box 130, Fort Duchesne, UT 84026, Telephones: (435) 722–4300 Superintendent, (435) 722–4344 Irrigation System Manager, (435) 724–5200 Uintah Indian Irrigation Operation and Maintenance Company.
Walker River Irrigation Project	Gerry Emm, Acting Superintendent, 311 East Washington Street, Carson City, NV 89701, Telephone: (775) 887–3500.

What irrigation assessments or charges are adjusted by this notice?

The rate table below contains final rates for the 2021 and 2022 calendar years for all irrigation projects where we recover costs of administering, operating, maintaining, and rehabilitating them. An asterisk immediately following the rate category notes the irrigation projects where 2021 rates are different from the 2022 rates.

Project name	Rate category	Final 2021 rate	Final 2022 rate
Northwest Region Rate Table			
Flathead Irrigation Project	Basic per acre—A	$33.50	$33.50
	Basic per acre—B	16.75	16.75
	Minimum charge per tract	75.00	75.00
Fort Hall Irrigation Project	Basic per acre *	58.50	62.50
	Minimum charge per tract *	39.00	40.00
Fort Hall Irrigation Project—Minor Units	Basic per acre *	38.00	41.00
	Minimum charge per tract *	39.00	40.00
Fort Hall Irrigation Project—Michaud Unit	Basic per acre *	63.50	68.50
	Pressure per acre *	99.50	106.50
	Minimum charge per tract *	39.00	40.00
Wapato Irrigation Project—Toppenish/Simcoe Units	Minimum charge per bill	25.00	25.00
	Basic per acre	25.00	25.00
Wapato Irrigation Project—Ahtanum Units	Minimum charge per bill	30.00	30.00
	Basic per acre	30.00	30.00
Wapato Irrigation Project—Satus Unit	Minimum charge per bill	79.00	79.00
	"A" Basic per acre	79.00	79.00
	"B" Basic per acre	85.00	85.00
Wapato Irrigation Project—Additional Works	Minimum charge per bill	80.00	80.00
	Basic per acre	80.00	80.00
Wapato Irrigation Project—Water Rental	Minimum charge per bill	86.00	86.00
	Basic per acre	86.00	86.00
Rocky Mountain Region Rate Table			
Blackfeet Irrigation Project	Basic per acre	20.50	20.50
Crow Irrigation Project—Willow Creek O&M (includes Agency, Lodge Grass #1, Lodge Grass #2, Reno, Upper Little Horn, and Forty Mile Units).	Basic per acre	28.50	28.50
Crow Irrigation Project—All Others (includes Bighorn, Soap Creek, and Pryor Units).	Basic per acre	28.50	28.50
Crow Irrigation Project—Two Leggins Unit	Basic per acre	14.00	14.00
Crow Irrigation Two Leggins Drainage District	Basic per acre	2.00	2.00
Fort Belknap Irrigation Project	Basic per acre *	17.00	18.00
Fort Peck Irrigation Project	Basic per acre	27.00	27.00
Wind River Irrigation Project—Units 2, 3 and 4	Basic per acre	25.00	25.00
Wind River Irrigation Project—Unit 6	Basic per acre	22.00	22.00
Wind River Irrigation Project—LeClair District (See Note #1)	Basic per acre	47.00	47.00

Project name	Rate category	Final 2021 rate	Final 2022 rate
Wind River Irrigation Project—Crow Heart Unit	Basic per acre	16.50	16.50
Wind River Irrigation Project—A Canal Unit	Basic per acre	16.50	16.50
Wind River Irrigation Project—Riverton Valley Irrigation District (See Note #1).	Basic per acre	30.65	30.65
Southwest Region Rate Table			
Pine River Irrigation Project	Minimum charge per tract	50.00	50.00
	Basic per acre *	22.00	22.50
Western Region Rate Table			
Colorado River Irrigation Project	Basic per acre up to 5.75 acre-feet *.	61.50	64.00
	Excess Water per acre-foot over 5.75 acre-feet.	18.00	18.00
Duck Valley Irrigation Project	Basic per acre	5.30	5.30
Yuma Project, Indian Unit (See Note #2)	Basic per acre up to 5.0 acre-feet *	154.50	(+)
	Excess Water per acre-foot over 5.0 acre-feet *.	30.00	(+)
	Basic per acre up to 5.0 acre-feet (Ranch 5) *.	154.50	(+)
San Carlos Irrigation Project (Joint Works) (See Note #3)	Basic per acre *	25.78	26.00

Final 2022 Construction Water Rate Schedule:

	Off project construction	On project construction—gravity water	On project construction—pump water
Administrative Fee.	$300.00	$300.00	$300.00.
Usage Fee	$250.00 per month.	No Fee	$100.00 per acre foot.
Excess Water Rate †.	$5.00 per 1,000 gal.	No Charge	No Charge.

Project name	Rate category	Final 2021 rate	Final 2022 rate
San Carlos Irrigation Project (Indian Works) (See Note #4)	Basic per acre *	$97.78	$90.50
Uintah Irrigation Project	Basic per acre	23.00	23.00
	Minimum Bill	25.00	25.00
Walker River Irrigation Project	Basic per acre	31.00	31.00

* Notes irrigation projects where rates are adjusted.
+ These rates have not yet been determined.
† The excess water rate applies to all water used in excess of 50,000 gallons in any one month.

Note #1: O&M rates for LeClair and Riverton Valley Irrigation Districts apply to trust lands that are serviced by each irrigation district. The annual O&M rates are based on budgets submitted by LeClair and Riverton Valley Irrigation Districts, respectively.

Note #2: The O&M rate for the Yuma Project, Indian Unit has two components. The first component of the O&M rate is established by the Bureau of Reclamation (BOR), the owner and operator of the Project. BOR's rate, which is based upon the annual budget submitted by BOR, is $151.00 for 2021 but has not been established for 2022. The second component of the O&M rate is established by BIA to cover administrative costs, which includes billing and collections for the Project. The 2021 BIA rate component is $3.50/acre. The final 2022 BIA rate component is $4.00/acre.

Note #3: The Construction Water Rate Schedule identifies fees assessed for use of irrigation water for non-irrigation purposes.

Note #4: The O&M rate for the San Carlos Irrigation Project—Indian Works has three components. The first component is established by BIA San Carlos Irrigation Project—Indian Works, the owner and operator of the Project; the 2021 rate is $56.00 per acre, and the final 2022 rate is $56.50 per acre. The second component is established by BIA San Carlos Irrigation Project—Joint Works; the 2021 rate is $25.78, and the final 2022 rate is $26.00 per acre. The third component is established by the San Carlos Irrigation Project Joint Control Board (comprised of representatives from the Gila River Indian Community and the San Carlos Irrigation and Drainage District); the 2021 rate is $16.00 per acre, and the 2022 rate is $8.00 per acre.

Consultation and Coordination With Tribal Governments (Executive Order 13175)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this notice under the Department's consultation policy and under the criteria of Executive Order 13175 and have determined there to be substantial direct effects on federally recognized Tribes because the irrigation projects are located on or associated with Indian reservations. To fulfill its consultation responsibility to Tribes and Tribal organizations, BIA communicates, coordinates, and consults on a continuing basis with these entities on issues of water delivery, water availability, and costs of administration, operation, maintenance, and rehabilitation of projects that concern them. This is accomplished at the individual irrigation project by project, agency, and regional

representatives, as appropriate, in accordance with local protocol and procedures. This notice is one component of our overall coordination and consultation process to provide notice to, and request comments from, these entities when we adjust irrigation assessment rates.

Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (Executive Order 13211)

The rate adjustments are not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

Regulatory Planning and Review (Executive Order 12866)

These rate adjustments are not a significant regulatory action and do not need to be reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

These rate adjustments are not a rule for the purposes of the Regulatory Flexibility Act because they establish ''a rule of particular applicability relating to rates.'' 5 U.S.C. 601(2).

Unfunded Mandates Reform Act of 1995

These rate adjustments do not impose an unfunded mandate on state, local, or Tribal governments in the aggregate, or on the private sector, of more than $130 million per year. They do not have a significant or unique effect on State, local, or Tribal governments or the private sector. Therefore, the Department is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Takings (Executive Order 12630)

These rate adjustments do not effect a taking of private property or otherwise have ''takings'' implications under Executive Order 12630. The rate adjustments do not deprive the public, State, or local governments of rights or property.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, these rate adjustments do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement because they will not affect the States, the relationship between the national government and the States, or the distribution of power and responsibilities among various levels of government. A federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This notice complies with the requirements of Executive Order 12988. Specifically, in issuing this notice, the Department has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct as required by section 3 of Executive Order 12988.

Paperwork Reduction Act of 1995

These rate adjustments do not affect the collections of information which have been approved by the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), under the Paperwork Reduction Act of 1995. The OMB Control Number is 1076–0141 and expires January 31, 2023.

National Environmental Policy Act

The Department has determined that these rate adjustments do not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969, 42 U.S.C. 4321–4370(d)), pursuant to 43 CFR 46.210(i). In addition, the rate adjustments do not present any of the 12 extraordinary circumstances listed at 43 CFR 46.215.

Bryan Newland,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2021–16696 Filed 8–4–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[212A2100DD/AAKC001030/A0A501010.999900253G]

Bureau of Indian Education Strategic Direction 2018–2023

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of tribal and public listening sessions.

SUMMARY: The Bureau of Indian Education (BIE) invites Tribes and stakeholders to listening sessions on its BIE Strategic Direction for 2018–2023 document for input on whether adjustments are appropriate for years 2022 and 2023, given the unforeseen events of the past year and a half.

DATES: Please see the **SUPPLEMENTARY INFORMATION** section of this notice for dates of the sessions and information on which Strategic Direction mission area will be discussed at each session. Written comments are due September 3, 2021.

ADDRESSES: Please see the **SUPPLEMENTARY INFORMATION** section of this notice for links to register for each session. You will receive a confirmation email upon registration with directions for joining. Written comments may be emailed to *Chelsea.Wilson@bie.edu.*

FOR FURTHER INFORMATION CONTACT: Chelsea Wilson, Program Analyst, Performance Office, at (703) 581–3064 or *Chelsea.Wilson@bie.edu.*

SUPPLEMENTARY INFORMATION: The BIE is currently in its third year of implementing its strategic planning document, BIE Strategic Direction (''Direction'') for 2018–2023. BIE developed the Direction with input from Tribal leaders and stakeholders such as school boards, educators, and families of Native students. Given the unforeseen events of the past year and a half, BIE is revisiting the Direction to conduct a mid-cycle check and make any appropriate adjustments to the milestones for years 4 and 5 of the Direction.

To obtain Tribes' and public stakeholders' input on years 4 and 5 of the Direction, we have designated a separate session to focus on each of the Direction's six mission areas and goals, as follows:

Mission Area: Comprehensive Strategic Direction Overview, August 24, 2021, 10 a.m.–11 a.m. CST, *https://doilearn2.webex.com/doilearn2/onstage/g.php?MTID=e97f55ec4f62e7837bddd0e5824c48cfe*

Goal 01—High-Quality, Early Childhood Education, August 24, 2021, 2 p.m.–1:30 p.m. CST, *https://doilearn2.webex.com/doilearn2/onstage/g.php?MTID=e923a6532db9ab220265e3d7c7dda71c0*

Goal 02—Wellness, Behavioral Health, and Safety, August 25, 2021, 9 a.m.–10:30 a.m. CST, *https://doilearn2.webex.com/doilearn2/onstage/g.php?MTID=ece4c91a0085438908204c810753e3062*

Goal 03—K–12 Instruction and High Academic Standards, August 25, 2021, 11 a.m.–12:30 p.m. CST, *https://doilearn2.webex.com/doilearn2/onstage/g.php?MTID=ee71e40e9d2ac48dc4149533cc5f816c5*

Goal 04—Postsecondary and Career Readiness, August 25, 2021, 2 p.m.–3:30 p.m. CST, *https://doilearn2.webex.com/doilearn2/onstage/g.php?MTID=e4529f0e4b103765d2c388655afd99f34*

Goal 05—Self-Determination, August 26, 2021, 9 a.m.–10:30 a.m. CST, *https://doilearn2.webex.com/doilearn2/onstage/g.php?MTID=e37e49195a2325aa3629746186cc08222*

Goal 06—Performance Management, August 26, 2021, 2 p.m.–3:30 p.m. CST, *https://doilearn2.webex.com/doilearn2/onstage/g.php?MTID=e8c10ad0d0bab896669a0e7e6f885f770*

BIE has invited Tribes by letter. BIE also welcomes input from families of students at BIE schools and other stakeholders.

Bryan Newland,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2021–16697 Filed 8–4–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

[212A2100DD/AAKC001030/A0A501010.999900 253G]

Office of the Assistant Secretary—Indian Affairs; Not Invisible Act of 2019

AGENCY: Office of the Assistant Secretary—Indian Affairs, Interior.

ACTION: Notice of public meetings.

SUMMARY: The U.S. Department of the Interior (Department), in coordination with the U.S. Department of Justice, is hosting public meetings to obtain stakeholder input related to implementation of the Not Invisible Act of 2019, which was enacted to increase intergovernmental coordination to identify and combat violent crime on Indian lands and against Indians.

DATES: Comments from stakeholders must be submitted no later than Friday, September 17, 2021. Please see the **SUPPLEMENTARY INFORMATION** section of this notice for the dates of the public meetings.

ADDRESSES: Send written comments to Heidi Todacheene, by any of the following methods:

- Preferred method by email to: *consultation@bia.gov;*
- Mail, hand-carry or use an overnight courier service to Heidi Todacheene, Office of the Assistant Secretary—Indian Affairs, U.S. Department of the Interior, 1849 C Street NW, Mail Stop 4660, Washington, DC 20240.

Please see the **SUPPLEMENTARY INFORMATION** section of this notice for links to register for the public meetings.

FOR FURTHER INFORMATION CONTACT: Heidi Todacheene, Senior Advisor to the Assistant Secretary—Indian Affairs at *heidi_todacheene@ios.doi.gov* or (202) 208–7163.

SUPPLEMENTARY INFORMATION:

I. Background

Congress enacted the Not Invisible Act (Act), Public Law 116–166, 134 Stat. 766 (2020), to increase intergovernmental coordination to identify and combat violent crime within Indian lands and against Indians. Section 4 of the Act requires that the Secretary of the Interior (Secretary), in coordination with the United States Attorney General, establish and appoint members to a Joint Commission on Reducing Violent Crime Against Indians (Commission) to develop recommendations on actions the Federal Government can take to identify, coordinate, and combat violent crime against Indians.

Section 4(c)(2)(A) of the Act requires the Commission to develop recommendations on actions the Federal Government can take to help combat violent crime within Indian lands and against Indians, including recommendations for:

(i) Identifying, reporting, and responding to instances of missing persons, murder, and human trafficking on Indian lands and of Indians;

(ii) legislative and administrative changes necessary to use programs, properties, or other resources funded or operated by the Department of the Interior and Department of Justice to combat the crisis of missing or murdered Indians and human trafficking on Indian lands and of Indians;

(iii) tracking and reporting data on instances of missing persons, murder, and human trafficking on Indian lands and of Indians;

(iv) addressing staff shortages and open positions within relevant law enforcement agencies, including issues related to the hiring and retention of law enforcement officers;

(v) coordinating Tribal, State, and Federal resources to increase prosecution of murder and human trafficking offenses on Indian lands and of Indians; and

(vi) increasing information sharing with Tribal governments on violent crime investigations and prosecutions in Indian lands that were terminated or declined.

II. Public Meetings

A. Purpose of the Public Meetings

The Department is holding public meetings to receive input from stakeholders on the formation of the Commission and what the Commission should consider when developing recommendations that will have lasting impacts on Indian Country and further address the missing and murdered Indigenous peoples crisis. The Department particularly seeks input from stakeholders who are diverse with expertise on the subject area, and those who are directly affected by violent crime against American Indians and Alaska Natives, including those in Tribal leadership, law enforcement, the judicial system, health care and mental health practitioners, counselors, national/regional/urban Indian organizations, and survivors and family members of individuals affected by violent crime. The Department is hosting separate Tribal consultations on this topic and has invited Tribal leaders by letter. The Department will consider the comments received during both the public meetings and Tribal consultation to inform formation of the Commission, development of the priorities and goals of the Commission and the scope of its duties, and to identify existing information related to the Commission's objectives. In addition, the information will guide the structure and topics for hearings, the process for gathering testimony and receiving such evidence the Commission considers to be necessary to carry out its duties.

B. Questions for Stakeholder Consideration

The following questions are presented for stakeholder consideration:

(1) What, from the topics listed in Section 4(c)(2)(A) of the Act and repeated above, is a priority that would most benefit your community? Are there other topics related to the Commission's objectives that you wish the Commission to consider?

(2) The Act requires that the Commission include representation from and coordination across several federal agencies. Are there agencies, bureaus, offices, or programs you believe should be represented on the Commission that are not listed in the Act? Are there agencies, bureaus, offices, or programs that may not be represented on the Commission but that you believe the Commission should otherwise coordinate with or obtain input from? If so, please identify these agencies, bureaus, offices, or programs.

(3) The Act lists categories of individuals from outside the Federal Government to be represented on the Commission.[1] Are there other categories

[1] Tribal law enforcement; a Tribal judge with experience in cases related to missing persons, murder, or trafficking; not fewer than 3 national, regional, or urban Indian organizations focused on violence against women and children on Indian lands or against Indians; at least 2 Indian survivors of human trafficking; at least 2 family members of

of individuals you believe should be represented on the Commission that are not listed in the Act? Do you have any recommendations on how best to identify and reach out to individuals from any of the listed categories?

(4) What are the unique challenges that your community wants the Commission to consider when developing recommendations for prevention efforts, grants, and programs of federal agencies related to murder of, trafficking of, and missing Indians?

(5) The Commission may hold hearings and take testimony to assist in carrying out its duties. Do you have specific recommendations on how hearings and testimony will best work to identify the challenges in combating violent crime within Indian lands and of Indians, including unique jurisdictional complexities on or near Indian lands?

(6) What suggestions do you have about how the Commission's recommendations can be most impactful? What other questions or comments do you wish to raise regarding implementation of the *Not Invisible Act*?

C. Public Meeting Schedule and Registration Links

The Department will conduct four public meetings by webinar and will accept both oral and written comments. Please register in advance for any session you plan on attending. After registering, you will receive a confirmation email containing information about joining the meeting. The public meeting schedule is as follows:

- Tuesday, August 31, 2021, 4 p.m.–6 p.m. ET. Please register in advance at: *https://www.zoomgov.com/meeting/register/vJItcOivrzouG3KN7DL5sPE_iJO2nDEFQo0*
- Thursday, September 2, 2021, 4 p.m.–6 p.m. ET. Please register in advance at: *https://www.zoomgov.com/meeting/register/vJIsdeyqrD8uEueD_SSCIfVmlRIfExnwsiY*
- Wednesday, September 8, 2021, 4 p.m.–6 p.m. ET. Please register in advance at: *https://www.zoomgov.com/meeting/register/vJItfu-tqzMtGO5RBgQX5yNVpOXBsdtHhc4*
- Friday, September 10, 2021, 4 p.m.–6 p.m. ET. Please register in advance at: *https://www.zoomgov.com/meeting/register/vJIscuuuqD4pGto5l8YHNrNA3zifJ__Q6Gg*

The Not Invisible Act of 2019 can be viewed at *https://www.congress.gov/116/plaws/publ166/PLAW-116publ166.pdf.*

III. Comments

The comments received from the Tribal consultation sessions and public meetings will help to identify the priorities and goals that will outline a framework for the Commission. You may submit your comments by any one of the methods listed in **ADDRESSES**. 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 the Department in your comment to withhold your personal identifying information from public view, the Department cannot guarantee that we will be able to do so.

Bryan Newland,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2021–16698 Filed 8–4–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM920000 L13100000.PP0000 212L1109AF]

Notice of Proposed Reinstatement of Terminated Oil and Gas Leases OKNM 123551, OKNM 129741, OKNM 134913, OKNM 121968, Oklahoma

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Mineral Leasing Act of 1920, as amended, Bevo Production Company (OKNM 123551), Red Dirt Energy, LLC (OKNM 129741), American Energy-Woodford, LLC (OKNM 134913), and Templar Energy, LLC (OKNM 121968) timely filed a petition for reinstatement of competitive oil and gas leases OKNM 123551 in Blaine County, Oklahoma, OKNM 129741 in Woods County, Oklahoma, OKNM 134913 in Payne County, Oklahoma, and OKNM 121968 in Roger Mills County, Oklahoma. The lessees paid the required rentals accruing from the date of termination. No leases were issued that affect these lands. The Bureau of Land Management (BLM) proposes to reinstate these leases.

FOR FURTHER INFORMATION CONTACT: Julieann Serrano, Supervisory Land Law Examiner, Branch of Adjudication, Bureau of Land Management New Mexico State Office, 301 Dinosaur Trail, Santa Fe, New Mexico 87508, (505) 954–2149, *jserrano@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lessees agree to new lease terms for rentals and royalties of $10 per acre, or fraction thereof, per year, and 16–2/3 percent, respectively. The lessees agree to additional or amended stipulations. The lessee paid the $500 administration fee for the reinstatement of the lease and the $159 cost for publishing this Notice.

The lessee met the requirements for reinstatement of the lease per Sec. 31(d) and (e) of the Mineral Leasing Act of 1920. The BLM is proposing to reinstate the leases, effective the date of termination, April 1, 2019, subject to the:

- Original terms and conditions of the lease;
- Additional and amended stipulations;
- Increased rental of $10 per acre;
- Increased royalty of 16–2/3 percent; and
- $159 cost of publishing this Notice.

Authority: 43 CFR 3108.2–3.

Julieann Serrano,

Supervisory Land Law Examiner.

[FR Doc. 2021–16754 Filed 8–4–21; 8:45 am]

BILLING CODE 4310–FB–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–1273]

Institution of Investigation; Certain Residential Premises Security Monitoring and Automation Control Panels, and Components Thereof

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 30, 2021, under section 337 of the Tariff Act of 1930, as amended, on behalf of ADT LLC of Boca Raton, Florida and The ADT Security Corporation of Boca Raton, Florida. Supplements to the complaint were filed on July 14 and 16, 2021. The complaint, as supplemented,

missing Indian people; and at least 2 family members of murdered Indian people. *See* Section 4(b)(2)(A),(K), (N)–(Q) of the Act. (Remaining categories will be selected based on Tribal nominations in accordance with the Act.)

alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain residential premises security monitoring and automation control panels, and components thereof by reason of infringement of certain claims of U.S. Patent No. 8,976,937 (''the '937 patent'') and U.S. Patent No. 9,286,772 (''the '772 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, as supplemented, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained 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 at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia Proctor, Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2020).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 30, 2021, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1 and 12 of the '937 patent and claims 1–4, 7–15, and 18–20 of the '772 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFRCFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''the Vivint SkyControl Panel, the Vivint Smart Hub Panel, and their components thereto (namely, software and hardware including processors, transceivers, and wireless communication modules) and other similar residential security monitoring and home automation control panels and their components'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

ADT LLC, 1501 Yamato Road, Boca Raton, FL 33431

The ADT Security Corporation, 1501 Yamato Road, Boca Raton, FL 33431

(b) The respondent is the following entity alleged to be in violation of section 337, and is a party upon which the complaint is to be served:

Vivint, Inc., 4931 North 300 West, Provo, UT 84604

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainants of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: July 30, 2021.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2021–16689 Filed 8–4–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1527 (Final)]

Standard Steel Welded Wire Mesh From Mexico

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is materially injured by reason of imports of standard steel welded wire mesh from Mexico, provided for in subheadings 7314.20.00 and 7314.39.00 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV'').[2]

Background

The Commission, pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)), instituted antidumping and countervailing duty investigations effective June 30, 2020, following receipt of petitions filed with the Commission and Commerce by Insteel Industries Inc., Mount Airy, North Carolina; Mid-South Wire Company, Nashville, Tennessee; National Wire LLC, Conroe, Texas; Oklahoma Steel & Wire Co., Madill, Oklahoma; and Wire Mesh Corp., Houston, Texas. Effective December 3, 2020, the Commission established a general schedule for the conduct of the final phase of its investigations on standard steel welded wire mesh, following a preliminary determination by Commerce that imports of the subject standard steel welded wire mesh were subsidized by the government of Mexico. Notice of the scheduling of the final phase of the

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 86 FR 32891, June 23, 2021.

Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 16, 2020 (85 FR 81487). In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission conducted its hearing through written testimony and video conference on February 12, 2021. All persons who requested the opportunity were permitted to participate.

The investigation schedules became staggered when Commerce did not align its countervailing duty investigation with its antidumping duty investigation, and reached an earlier final countervailing duty determination. In April 2021, the Commission issued a final affirmative determination in its countervailing duty investigation of standard steel welded wire mesh from Mexico (86 FR 18555, April 9, 2021). Following notification of a final determination by Commerce that imports of standard steel welded wire mesh from Mexico were being sold at LTFV within the meaning of section 735(b) of the Act (19 U.S.C. 1673d(a)), notice of the supplemental scheduling of the final phase of the Commission's antidumping duty investigation was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 1, 2021 (86 FR 35124).

The Commission made this determination pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)). It completed and filed its determination in this investigation on July 30, 2021. The views of the Commission are contained in USITC Publication 5217 (July 2021), entitled *Standard Steel Welded Wire Mesh from Mexico: Investigation No. 731–TA–1527 (Final).*

By order of the Commission.

Issued: July 30, 2021.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2021–16683 Filed 8–4–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1254]

Certain Semiconductor Devices, Wireless Infrastructure Equipment Containing the Same, and Components Thereof; Notice of a Commission Determination Not To Review an Initial Determination Granting a Joint Motion To Terminate the Investigation in Its Entirety Based Upon Settlement; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined not to review an initial determination (''ID'') (Order No. 7) of the presiding administrative law judge (''ALJ''), granting an unopposed motion to terminate the investigation in its entirety based upon settlement.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3042. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: On March 10, 2021, the Commission instituted this investigation based on a complaint filed by Samsung Electronics Co., Ltd. of Republic of Korea and Samsung Austin Semiconductor, LLC of Austin, Texas (collectively, ''Samsung''). 86 FR 13733 (Mar. 10, 2021). The complaint alleged violations of section 337 based on the importation into the United States, the sale for importation, or the sale within the United States after importation of certain semiconductor devices, wireless infrastructure equipment containing the same, and components thereof by reason of infringement of claims 1–4 and 6–20 of U.S. Patent No. 9,748,243; claims 1–15 of U.S. Patent No. 9,018,697; claims 1–3, 6–8, 10–14, 16, 19, 20, 23, 24, and 26–29 of U.S. Patent No. 9,048,219; and claims 1, 5–11, 13, 15, and 18 of U.S. Patent No. 9,761,719. *Id.* The Commission's notice of investigation named as respondents, Ericsson AB and Telefonaktiebolaget LM Ericsson both of Stockholm, Sweden, and Ericsson Inc. of Plano, Texas (collectively, ''Ericsson''). *Id.* The notice of investigation did not name the Office of Unfair Import Investigations as a party. *Id.*

On May 14, 2021, Samsung and Ericsson filed a joint motion to terminate the investigation in its entirety based upon settlement.

On July 8, 2021, the ALJ issued the subject ID (Order No. 7) granting the motion. The subject ID found that the joint motion complies with Commission Rule 210.21(a)(2), which provides that ''[a]ny party may move at any time to terminate an investigation in whole or in part as to any or all respondents on the basis of a settlement, a licensing or other agreement . . . .'' ID at 1 (citing 19 CFR 210.21(a)(2)). The ID observed that ''Samsung and Ericsson have entered into a Global Patent License Agreement that includes an agreement to terminate this Investigation in its entirety,'' and in accordance with Commission Rule 210.21(b)(1) state that ''[t]here are no other agreements, written or oral, expressed or implied between Samsung and Ericsson concerning the subject matter of this Investigation.'' ID at 1–2 (citing 19 CFR 210.21(b)(1)). In addition, the parties provided confidential and public versions of the settlement agreement. The ID further noted that the parties agree that termination of this investigation ''will not have any adverse effect of the public health and welfare and/or competitive conditions in the United States'' and that ''[t]ermination will also conserve the parties' respective resources and those of the Commission.'' *Id.* at 2. No one petitioned for review of the ID.

The Commission has determined not to review the subject ID. The investigation is hereby terminated in its entirety.

The Commission vote for this determination took place on July 30, 2021.

The authority for the Commission's determination is contained in 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: July 30, 2021.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2021–16656 Filed 8–4–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1245]

Certain Electronic Devices With Wireless Connectivity, Components Thereof, and Products Containing Same; Notice of Commission Determination Not To Review an Initial Determination Terminating an Investigation Based on a Settlement Agreement; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 6) of the presiding administrative law judge (''ALJ'') granting a joint motion to terminate the investigation based on a settlement agreement. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3228. 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: On February 8, 2021, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), based on a complaint filed by Ericsson Inc. of Plano, Texas, and Telefonaktiebolaget LM Ericsson and Ericsson AB both of Stockholm, Sweden (all collectively, ''Ericsson''). 86 FR 8653–54 (Feb. 8, 2021). The complaint, as supplemented, alleges a violation of section 337 based upon the importation into the United States, sale for importation, or sale after importation into the United States of certain electronic devices with wireless connectivity, components thereof, and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 7,151,430; 6,879,849; 7,286,823; and 9,313,178. *Id.* The complaint further alleges that a domestic industry exists. *Id.* The notice of investigation names five respondents: Samsung Electronics Co., Ltd. of Suwon, South Korea; Samsung Electronics America, Inc. of Ridgefield Park, New Jersey; Samsung Electronics Thai Nguyen Co., Ltd. of Pho Yen, Vietnam; Samsung Electronics Vietnam Co., Ltd. of Yen Phong, Vietnam; and Samsung Electronics HCMC CE Complex, Co., Ltd. of Ho Chi Minh City, Vietnam (collectively, ''Samsung''). *See id.*

On July 2, 2021, Ericsson and Samsung filed a joint motion to terminate this investigation in its entirety based on a settlement agreement.

On July 7, 2021 the presiding ALJ issued the subject ID granting the joint motion to terminate the investigation. *See* Order No. 6. The subject ID finds that the joint motion complies with Commission Rule 210.21(b)(1) (19 CFR 210.21(b)(1)) and that there are no extraordinary circumstances that would warrant denying the motion. The ID also finds that termination of the investigation based on settlement would not be contrary to the public interest.

No party petitioned for review of the subject ID.

The Commission has determined not to review the subject ID (Order No. 6). The investigation is terminated.

The Commission vote for this determination took place on August 2, 2021.

While temporary remote operating procedures are in place in response to COVID–19, the Office of the Secretary is not able to serve parties that have not retained counsel or otherwise provided a point of contact for electronic service. Accordingly, pursuant to Commission Rules 201.16(a) and 210.7(a)(1) (19 CFR 201.16(a), 210.7(a)(1)), the Commission orders that the complainant complete service for any party/parties without a method of electronic service noted on the attached Certificate of Service and shall file proof of service on the Electronic Document Information System (EDIS).

The authority for the Commission's determination is contained in 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: August 2, 2021.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2021–16761 Filed 8–4–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Laptops, Desktops, Servers, Mobile Phones, Tablets, and Components Thereof, DN 3562*; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov* . The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Sonrai Memory Ltd. on August 2, 2021. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain laptops, desktops, servers, mobile phones, tablets, and components thereof. The complainant names as respondents: Amazon.Com,

Inc. of Seattle, WA; Dell Technologies Inc. of Round Rock, TX; EMC Corporation of Round Rock, TX; Lenovo Group Ltd. of China; Lenovo (United States) Inc. of Morrisville, NC; Motorola Mobility LLC of Chicago, IL; LG Electronics Inc. of Korea; LG Electronics USA, Inc. Englewood Cliffs, NJ; Samsung Electronics Co., Ltd. of Korea; and Samsung Electronics America, Inc. of Ridgefield Park, NJ. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondents alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3562'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures.[1]) Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: August 2, 2021.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2021–16757 Filed 8–4–21; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov*

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Gray Television, Inc., et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Gray Television, Inc., et al.,* Civil Action No. 1:21–cv–02041. On July, 28, 2021, the United States filed a Complaint alleging that Gray Television, Inc.'s (''Gray'') proposed acquisition of Quincy Media, Inc.'s (''Quincy'') commercial television broadcast stations would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires Gray and Quincy to divest commercial television broadcast stations in seven local television markets: (i) Tucson, Arizona; (ii) Madison, Wisconsin; (iii) Rockford, Illinois; (iv) Paducah, Kentucky-Cape Girardeau, Missouri-Harrisburg-Mt. Vernon, Illinois; (v) Cedar Rapids-Waterloo-Iowa City-Dubuque, Iowa; (vi) La Crosse-Eau Claire, Wisconsin; and (vii) Wausau-Rhinelander, Wisconsin.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the

copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be submitted in English and directed to Scott Scheele, Chief, Media, Entertainment, and Communications Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 7000, Washington, DC 20530 (email address: *ATR.MEC.Information@usdoj.gov*).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

United States District Court for the District of Columbia

United States of America, 450 Fifth Street NW, Washington, DC 20530, Plaintiff v. *Gray Television, Inc., 4370 Peachtree Road NE, Atlanta, Georgia 30319*; and *Quincy Media, Inc., 130 South 5th Street, Quincy, Illinois 62301*, Defendants.

Case No.: 1:21–cv–02041–CJN

Judge: Carl J. Nichols

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action against Gray Television, Inc. (''Gray'') and Quincy Media, Inc. (''Quincy'') to enjoin Gray's proposed acquisition of Quincy. The United States complains and alleges as follows:

I. Nature of the Action

1. Pursuant to a Stock Purchase Agreement dated January 31, 2021, Gray plans to acquire Quincy for approximately $925 million in cash.

2. The proposed acquisition would combine popular local television stations that compete against each other in several markets, likely resulting in significant harm to competition.

3. In seven Designated Market Areas (''DMAs''), Gray and Quincy each own at least one broadcast television station that is affiliated with one of the ''Big Four'' television networks: NBC, CBS, ABC, or FOX. These seven DMAs, collectively referred to in this Complaint as the ''Overlap DMAs'' are: (i) Tucson, Arizona; (ii) Madison, Wisconsin; (iii) Rockford, Illinois; (iv) Paducah, Kentucky-Cape Girardeau, Missouri-Harrisburg-Mt. Vernon, Illinois; (v) Cedar Rapids-Waterloo-Iowa City-Dubuque, Iowa; (vi) La Crosse-Eau Claire, Wisconsin; and (vii) Wausau-Rhinelander, Wisconsin.

4. In each Overlap DMA, the proposed acquisition would eliminate competition between Gray and Quincy in the licensing of Big Four network content (''retransmission consent'') to cable, satellite, fiber optic television, and over-the-top providers (referred to collectively as multichannel video programming distributors or ''MVPDs''), for distribution to their subscribers. Additionally, in each Overlap DMA, the proposed acquisition would eliminate competition between Gray and Quincy in the sale of broadcast television spot advertising to advertisers interested in reaching viewers in the DMA.

5. By eliminating a competitor, the acquisition would likely give Gray the power to charge MVPDs higher fees for its programming—fees that those companies would likely pass on, in large measure, to their subscribers. Additionally, the acquisition would likely allow Gray to charge local businesses and other advertisers higher prices to reach audiences in the Overlap DMAs.

6. As a result, the proposed acquisition of Quincy by Gray likely would substantially lessen competition in the markets for retransmission consent in each of the Overlap DMAs, and in the markets for selling broadcast television spot advertising in each of the Overlap DMAs, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

II. The Defendants

7. Gray is a Georgia corporation with its headquarters in Atlanta, Georgia. Gray owns 165 television stations in 94 DMAs, of which 139 are Big Four affiliates. In 2020, Gray reported revenues of $2.4 billion.

8. Quincy is an Illinois corporation with its headquarters in Quincy, Illinois. Quincy owns 20 television stations in 16 DMAs, of which 19 are Big Four affiliates. In 2020, Quincy had revenues of approximately $338 million.

III. Jurisdiction and Venue

9. The United States brings this action under Section 15 of the Clayton Act, 15 U.S.C. 25, as amended, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

10. The Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a), and 1345.

11. Defendants sell broadcast television spot advertising to businesses (either directly or through advertising agencies) in the flow of interstate commerce, and such activities substantially affect interstate commerce.

12. Gray and Quincy have each consented to venue and personal jurisdiction in this judicial district for purposes of this action. Both companies transact business in this district. Venue is proper in this district under Section 12 of the Clayton Act, 15 U.S.C. 22, and under 28 U.S.C. 1391(b) and (c).

IV. Big Four Television Retransmission Consent Markets

A. Background

13. MVPDs, such as Comcast, DirecTV, and Mediacom, typically pay the owner of each local Big Four broadcast station in a given DMA a per-subscriber fee for the right to retransmit the station's content to the MVPDs' subscribers. The per-subscriber fee and other terms under which an MVPD is permitted to distribute a station's content to its subscribers are set forth in a retransmission agreement. A retransmission agreement is negotiated directly between a broadcast station group, such as Gray or Quincy, and a given MVPD, and this agreement typically covers all of the station group's stations located in the MVPD's service area, or ''footprint.''

14. Each broadcast station group typically renegotiates retransmission agreements with the MVPDs every few years. If an MVPD and a broadcast station group cannot agree on a retransmission consent fee at the expiration of a retransmission agreement, the result may be a ''blackout'' of the broadcast group's stations from the particular MVPD—*i.e.,* an open-ended period during which the MVPD may not distribute those stations to its subscribers until a new contract is successfully negotiated.

B. Relevant Markets

1. Product Market

15. Big Four broadcast content has special appeal to television viewers in comparison to the content that is available through other broadcast stations and cable networks. Big Four stations usually are the highest ranked in terms of audience share and ratings in each DMA, largely because of unique offerings such as local news, sports, and highly ranked primetime programs.

16. Because of Big Four stations' popular national content and valued local coverage, MVPDs regard Big Four programming as highly desirable for inclusion in the packages they offer subscribers.

17. Non-Big Four broadcast stations are typically not close substitutes for viewers of Big Four stations. Stations that are affiliates of networks other than the Big Four, such as the CW Network,

MyNetworkTV, or Telemundo, typically feature niche programming without local news, weather or sports—or, in the case of Telemundo, only offer local news, weather, and sports aimed at a Spanish-speaking audience. Stations that are unaffiliated with any network are similarly unlikely to carry programming with broad popular appeal.

18. If an MVPD suffers a blackout of a Big Four station in a given DMA, many of the MVPD's subscribers in that DMA are likely to turn to other Big Four stations in the DMA to watch similar content, such as sports, primetime shows, and local news and weather. This willingness of viewers to switch between competing Big Four broadcast stations limits an MVPD's expected losses in the case of a blackout, and thus limits a broadcaster's ability to extract higher fees from that MVPD—since an MVPD's willingness to pay higher retransmission consent fees for content rises or falls with the harm it would suffer if that content were lost.

19. Due to the limited programming typically offered by non-Big Four stations, viewers are much less likely to switch to a non-Big Four station than to switch to other Big Four stations in the event of a blackout of a Big Four station. Accordingly, competition from non-Big Four stations does not typically impose a significant competitive constraint on the retransmission consent fees charged by the owners of Big Four stations.

20. For the same reasons, subscribers—and therefore MVPDs—generally do not view cable network programming as a close substitute for Big Four network content. This is primarily because cable networks offer different content. For example, cable networks generally do not offer local news, which provides a valuable connection to the local community that is important to viewers of Big Four stations.

21. Because viewers do not regard non-Big Four broadcast stations or cable networks as close substitutes for the programming they receive from Big Four stations, these other sources of programming are not sufficient to discipline an increase in the fees charged for Big Four television retransmission consent.

22. For all of these reasons, a hypothetical monopolist of Big Four television stations likely could impose a small but significant and non-transitory increase in the price (''SSNIP'') it charges MVPDs for retransmission consent without losing sufficient sales to render the price increase unprofitable.

23. The licensing of Big Four television retransmission consent therefore constitutes a relevant product market and line of commerce under Section 7 of the Clayton Act, 15 U.S.C. 18.

2. Geographic Markets

24. A DMA is a geographic unit for which The Nielsen Company (US), LLC—a firm that surveys television viewers—furnishes broadcast television stations, MVPDs, cable networks, advertisers, and advertising agencies in a particular area with data to aid in evaluating audience size and composition. DMAs are widely accepted by industry participants as the standard geographic areas to use in evaluating television audience size and demographic composition. The Federal Communications Commission (''FCC'') also uses DMAs as geographic units with respect to its MVPD regulations.

25. In the event of a blackout of a Big Four network station, FCC rules generally prohibit an MVPD from importing the same network's content from another DMA. Thus, MVPD subscribers in one DMA cannot switch to Big Four programming in another DMA in the face of a blackout. Therefore, substitution to stations outside the DMA cannot discipline an increase in the fees charged for retransmission consent for broadcast stations in the DMA. Each DMA thus constitutes a relevant geographic market for the licensing of Big Four television retransmission consent within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

C. Likely Anticompetitive Effects

26. The more concentrated a market would be as a result of a proposed merger, the more likely it is that the proposed merger would substantially lessen competition. Concentration can be measured by the widely used Herfindahl-Hirschman Index (''HHI'').[1] Under the *Horizontal Merger Guidelines* issued by the Department of Justice and the Federal Trade Commission, mergers that result in highly concentrated markets (*i.e.,* with an HHI over 2,500) and that increase the HHI by more than 200 points are presumed likely to enhance market power and substantially lessen competition. *See, e.g., United States* v. *Anthem, Inc.,* 855 F.3d 345, 349 (D.C. Cir. 2017).

27. The chart below summarizes Defendants' approximate Big Four television retransmission consent market shares, based on revenue figures in BIA Advisory Services' *Investing in Television Market Report 2020* (1st edition), and the effect of the transaction on the HHI in each Overlap DMA.[2]

Overlap DMA	Gray share (%)	Quincy share (%)	Merged share (%)	Pre-merger HHI	Post-merger HHI	HHI increase
Tucson, AZ	30	24	54	2,564	4,010	1,446
Madison, WI	30	23	53	2,556	3,956	1,400
Paducah-Harrisburg, KY-IL	30	23	53	2,622	4,022	1,400
Cedar Rapids, IA	26	20	46	2,533	3,600	1,067
La Crosse-Eau Claire, WI	33	20	53	2,622	3,956	1,333
Rockford, IL	27	20	47	2,533	3,600	1,066
Wausau-Rhinelander, WI	44	33	77	3,580	6,543	2,963

28. As indicated by the preceding chart, the post-merger HHI in each Overlap DMA is well above 2,500, and the HHI increase in each Overlap DMA far exceeds the 200-point threshold. Thus, the proposed acquisition presumptively violates Section 7 of the Clayton Act in each Overlap DMA.

[1] The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2,600$). The HHI takes into account the relative size distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size, and reaches its maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

[2] In this chart, sums that do not agree precisely reflect rounding.

29. The proposed transaction would give Gray the ability to black out more Big Four stations simultaneously in each of the Overlap DMAs than either Gray or Quincy could black out independently today. This would increase Gray's bargaining leverage with MVPDs, likely leading to increased retransmission consent fees charged to such MVPDs.

V. Broadcast Television Spot Advertising Markets

A. Background

31. Broadcast television stations, including both Big Four and non-Big Four stations in the Overlap DMAs, sell advertising ''spots'' during breaks in their programming. Advertisers purchase spots from a broadcast station to communicate with viewers within the DMA in which the broadcast television station is located. Broadcast television spot advertising is distinguished from ''network'' advertising, which consists of advertising time slots sold on nationwide broadcast networks by those networks, and not by local broadcast television stations or their representatives.

32. Gray and Quincy each own at least one Big Four affiliated television station in each of the Overlap DMAs and compete with one another to sell broadcast television spot advertising in each of the Overlap DMAs.

B. Relevant Markets

1. Product Market

33. Broadcast television spot advertising constitutes a relevant product market and line of commerce under Section 7 of the Clayton Act, 15 U.S.C. 18. Advertisers' inability or unwillingness to substitute to other types of advertising in response to a price increase in broadcast television spot advertising supports this relevant market definition.

i. Overview of Broadcast Television Spot Advertising

34. Typically, an advertiser purchases broadcast television advertising spots as one component of an advertising strategy that may also include cable television advertising spots, newspaper advertisements, billboards, radio spots, digital advertisements, email advertisements, and direct mail.

35. Different components of an advertising strategy generally target different audiences and serve distinct purposes. Advertisers that advertise on broadcast television stations do so because the stations offer popular programming such as local news, sports, and primetime and syndicated shows that are especially attractive to a broad demographic base and a large audience of viewers. Other categories of advertising may offer different characteristics, but are not close substitutes for broadcast television spot advertising. For example, ads associated with online search results target individual consumers or respond to specific keyword searches, whereas broadcast television spot advertising reaches a broad audience throughout a DMA.

36. Technological developments may bring various advertising categories into closer competition with each other. For example, broadcasters and cable networks are developing technology to make their spot advertising addressable, meaning that broadcasters could deliver targeted advertising in live broadcast and on-demand formats to smart televisions or streaming devices. For certain advertisers, these technological changes may make other categories of advertising closer substitutes for advertising on broadcast television in the future. However, at this time, for many broadcast television spot advertising advertisers, these projected developments are insufficient to mitigate the anticompetitive effects of the proposed acquisition in the Overlap DMAs.

ii. Cable Television Spot Advertising Is Not a Reasonable Substitute

37. MVPDs sell spot advertising to be shown during breaks in cable network programming. For viewers, these advertisements are similar to broadcast television spot ads. However, cable television spot advertising is not at this time a reasonable substitute for broadcast television spot advertising for most advertisers.

38. First, broadcast television spot advertising is a more efficient option than cable television spot advertising for many advertisers. Because broadcast television offers highly rated programming with broad appeal, each broadcast television advertising spot typically offers the opportunity to reach more viewers (more ''ratings points'') than a single spot on a cable network. By contrast, MVPDs offer dozens of cable networks with specialized programs that appeal to niche audiences. This fragmentation allows advertisers to target narrower demographic subsets by buying cable spots on particular channels, but it does not meet the needs of advertisers who want to reach a large percentage of a DMA's population.

39. Second, households that have access to cable networks are divided among multiple MVPDs within a DMA. In contrast, broadcast television spot advertising reaches all households that subscribe to an MVPD and, through an over-the-air signal, most households with a television that do not.

40. Finally, MVPDs' inventory of cable television spot advertising is limited—typically to two minutes per hour—contrasting sharply with broadcast stations' much larger number of advertising minutes per hour. The inventory of DMA-wide cable television spot advertising is substantially further reduced by the large portion of those spots allocated to local zone advertising, in which an MVPD sells spots by geographic zones within a DMA, allowing advertisers to target smaller geographic areas. Due to the limited inventories and lower ratings associated with cable television spot programming, cable television spot advertising does not offer a sufficient volume of ratings points, or broad enough household penetration, to provide a viable alternative to broadcast television spot advertising.

iii. Digital Advertising Is Not a Reasonable Substitute

41. Digital advertising is also not a sufficiently close substitute for broadcast television spot advertising. Some digital advertising, such as static and floating banner advertisements, static images, text advertisements, wallpaper advertisements, pop-up advertisements, flash advertisements, and paid search results, lacks the combination of sight, sound, and motion that makes television spot advertising particularly impactful and memorable and therefore effective for advertisers. Digital video advertisements, on the other hand, do allow for a combination of sight, sound, and motion, and on this basis are more comparable to broadcast television spot advertising than other types of digital advertising. However, they are still not close substitutes for broadcast television spot advertising because digital advertisements typically have a different scope of reach compared to broadcast television spot advertising. For example, while advertisers use broadcast television spots to reach a large percentage of households within a given DMA, advertisers use digital advertising to reach a variety of different audiences. While a small portion of advertisers purchase DMA-wide advertisements on digital platforms, digital advertisements usually are targeted either very broadly, such as nationwide or regional, or to a geographic target smaller than a DMA, such as a city or a zip code, or to narrow demographic subsets of a population.

iv. Other Forms of Advertising Are Not Reasonable Substitutes

42. Other forms of advertising, such as radio, newspaper, billboard, and direct-mail advertising, also do not constitute effective substitutes for broadcast television spot advertising. These forms of media do not reach as many local viewers or drive brand awareness to the same extent as broadcast television spot advertising does. Broadcast television spot advertising possesses a unique combination of attributes that advertisers value in a way that sets it apart from advertising on other media. Broadcast television spot advertising combines sight, sound, and motion in a way that makes television advertisements particularly memorable and impactful.

43. For all of these reasons, a hypothetical monopolist of broadcast television spot advertising likely could impose a SSNIP without losing sufficient sales to render the price increase unprofitable.

44. The sale of broadcast television spot advertising therefore constitutes a relevant product market and line of commerce under Section 7 of the Clayton Act, 15 U.S.C. 18.

2. Geographic Markets

45. For an advertiser seeking to reach potential customers in a given DMA, broadcast television stations located outside of the DMA do not provide effective access to the advertiser's target audience. The signals of broadcast television stations located outside of the DMA generally do not reach any significant portion of the target DMA through either over-the-air signal or MVPD distribution. Because advertisers cannot reach viewers inside a DMA by advertising on stations outside the DMA, a hypothetical monopolist of broadcast television spot advertising on stations in a given DMA could likely profitably impose at least a SSNIP.

46. Each of the Overlap DMAs accordingly constitutes a relevant geographic market for the sale of broadcast television spot advertising within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

C. Likely Anticompetitive Effects

47. The chart below summarizes Defendants' approximate market shares, based on figures in BIA Advisory Services' *Investing in Television Market Report 2020* (1st edition), and the result of the transaction on the HHIs in the sale of broadcast television spot advertising in each of the Overlap DMAs.

Overlap DMA	Gray share (%)	Quincy share (%)	Merged share (%)	Pre-merger HHI	Post-merger HHI	HHI increase
Tucson, AZ	27	25	52	2,059	3,389	1,330
Madison, WI	31	20	51	2,540	3,745	1,205
Paducah-Harrisburg, KY–IL	26	22	48	2,886	4,022	1,136
Cedar Rapids, IA	41	34	75	3,108	5,852	2,744
La Crosse-Eau Claire, WI	33	23	56	2,587	4,084	1,497
Rockford, IL	28	35	63	3,348	5,319	1,971
Wausau-Rhinelander, WI	40	38	78	3,479	6,489	3,010

48. Defendants' large market shares reflect the fact that, in each Overlap DMA, Gray and Quincy each own one or more significant broadcast television stations. As indicated by the preceding chart, the post-merger HHI in each Overlap DMA is well above 2,500 and the HHI increase in each Overlap DMA far exceeds the 200-point threshold above which a transaction is presumed to enhance market power and harm competition. Defendants' proposed transaction is thus presumptively unlawful in each Overlap DMA.

49. In addition to substantially increasing the concentration levels in each Overlap DMA, the proposed acquisition would combine Gray's and Quincy's broadcast television stations, which are generally close competitors in the sale of broadcast television spot advertising. In each Overlap DMA, Defendants' broadcast stations compete head-to-head in the sale of broadcast television spot advertising. Advertisers obtain lower prices as a result of this competition. In particular, advertisers in the Overlap DMAs can respond to an increase in one station's spot advertising prices by purchasing, or threatening to purchase, advertising spots on one or more stations owned by different broadcast station groups, thereby ''buying around'' the station that raises its prices. This practice allows the advertisers either to avoid the first station's price increase, or to pressure the first station to lower its prices.

50. If Gray acquires Quincy's stations, advertisers seeking to reach audiences in the Overlap DMAs would have fewer competing broadcast television alternatives available to meet their advertising needs, and would find it more difficult and costly to buy around higher prices imposed by the combined stations. This would likely result in increased advertising prices, lower quality local programming to which the spot advertising is attached (for example, less investment in local news), and less innovation in providing advertising solutions to advertisers.

51. For these reasons, the proposed acquisition likely would substantially lessen competition in the sale of broadcast television spot advertising in each of the Overlap DMAs, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

VI. Absence of Countervailing Factors

52. De novo entry into each Overlap DMA is unlikely. The FCC regulates entry through the issuance of broadcast television licenses, which are difficult to obtain because the availability of spectrum is limited and the regulatory process associated with obtaining a license is lengthy. Even if a new signal were to become available, commercial success would come over a period of many years, if at all. Because Big Four affiliated stations generally have the highest ratings in each DMA, they are more successful at selling broadcast television spot ads compared to non-Big Four affiliated broadcast stations. Thus, entry of a new broadcast station into an Overlap DMA would not be timely, likely, or sufficient to prevent or remedy the proposed acquisition's likely anticompetitive effects in the relevant markets.

53. Defendants cannot demonstrate transaction-specific, verifiable efficiencies sufficient to offset the proposed acquisition's likely anticompetitive effects.

VII. Violations Alleged

54. The United States hereby incorporates the allegations of paragraphs 1 through 53 above as if set forth fully herein.

55. Gray's proposed acquisition of Quincy likely would substantially lessen competition in the relevant markets, in violation of Section 7 of the

Clayton Act, 15 U.S.C. 18. The acquisition would likely have the following anticompetitive effects, among others:

a. Competition in the licensing of Big Four television retransmission consent in each of the Overlap DMAs likely would be substantially lessened;

b. competition between Gray and Quincy in the licensing of Big Four television retransmission consent in each of the Overlap DMAs would be eliminated;

c. the fees charged to MVPDs for the licensing of retransmission consent in each of the Overlap DMAs likely would increase;

d. competition in the sale of broadcast television spot advertising in each of the Overlap DMAs likely would be substantially lessened;

e. competition between Gray and Quincy in the sale of broadcast television spot advertising in each of the Overlap DMAs would be eliminated; and

f. prices for spot advertising on broadcast television stations in each of the Overlap DMAs likely would increase, the quality of local programming likely would decrease, and Defendants likely would be less innovative in providing advertising solutions to advertisers.

VIII. Relief Requested

56. The United States requests that:

a. The Court adjudge the proposed acquisition to violate Section 7 of the Clayton Act, 15 U.S.C. 18;

b. the Court enjoin and restrain Defendants from carrying out the acquisition, or entering into any other agreement, understanding, or plan by which Gray would merge with, acquire, or be acquired by Quincy, or Gray and Quincy would combine any of their respective Big Four stations in the Overlap DMAs;

c. the Court award the United States its costs of this action; and

d. the Court award such other relief to the United States as the Court may deem just and proper.

Dated: July 28, 2021.

Respectfully submitted,

Counsel for Plaintiff United States of America

Richard A. Powers,
Acting Assistant Attorney General, Antitrust Division.

Kathleen S. O'Neill,
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Scott Scheele (D.C. Bar #429061),
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** Lead Attorney To Be Noticed.*

United States District Court For The District of Columbia

United States of America, Plaintiff, v. *Gray Television, Inc., and Quincy Media, Inc., Defendants.*

Case No.: 1:21–cv–02041–CJN

Judge: Carl J. Nichols

Proposed Final Judgment

Whereas, Plaintiff, United States of America, filed its Complaint on July 28, 2021;

And Whereas, the United States and Defendants, Gray Television, Inc., and Quincy Media, Inc., have consented to entry of this Final Judgment without the taking of testimony, without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And Whereas, Defendants agree to make certain divestitures to remedy the loss of competition alleged in the Complaint;

And Whereas, Defendants represent that the divestitures and other relief required by this Final Judgment can and will be made and that Defendants will not later raise a claim of hardship or difficulty as grounds for asking the Court to modify any provision of this Final Judgment;

Now therefore, it is ordered, adjudged, and decreed:

I. Jurisdiction

The Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' means Allen or another entity or entities to whom Defendants divest the Divestiture Assets.

B. ''Gray'' means Defendant Gray Television, Inc., a Georgia corporation with its headquarters in Atlanta, Georgia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Quincy'' means Defendant Quincy Media, Inc., an Illinois corporation with its headquarters in Quincy, Illinois, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. ''Allen'' means Allen Media Holdings, LLC, a Delaware limited liability company with its headquarters in Los Angeles, California, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. ''Big Four Affiliation Agreement'' means an affiliation agreement with NBC, CBS, ABC, or FOX.

F. ''Cooperative Agreement'' means (1) carriage agreements, joint sales agreements, joint operating agreements, local marketing agreements, news share agreements, shared services agreements, joint ventures, partnerships, or collaborations or (2) any agreement through which a person exercises control over any broadcast television station not owned by the person.

G. ''Divestiture Assets'' means all of Defendants' rights, titles, and interests in and to all property and assets, tangible and intangible, wherever located, relating to or used in connection with the Divestiture Stations, including:

1. The KWWL main transmitter site located at 2698 Lucas Avenue, Rowley, IA 52329 and the KWWL main studio located at 511 East 5th Street, Waterloo, IA 50703;

2. the WAOW studio facility located at 1900–1908 Grand Avenue, Wausau, WI 55403 and the WAOW satellite location at 605 Kent Street East, Wausau, WI 55504;

3. the WKOW studio facility located at 5725 Tokay Boulevard, Madison, WI 53719;

4. the WQOW transmitter site located at 780th Avenue Rural Route 3, Colfax, WI 54730; the WQOW microwave repeater located at S17, T20N, R8W, Arcadia, WI; the WQOW studio facility located at 5545 Highway 93, Eau Claire, WI 54701; and the WQOW microwave tower located at S34, T24N, R9W, Albion Township, WI;

5. the WREX studio and transmitter facility located at 10322 Auburn Road, Rockford, IL 61101;

6. the WSIL studio and office located at 1416 Country Aire Drive, Carterville, IL 62918; the WSIL tower and transmitter building located at 1154 N Wagon Creek Road, Creal Springs, IL 62922; the WSIL tower located at 21 W Poplar Street, Harrisburg, IL 62946; and the WSIL tower and transmitter building located at 3690 Highway 67, Poplar Bluff, MO 63901;

7. the WXOW studio and transmitter facility located at 3705 County Road 25, La Crescent, MN 55947;

8. the KVOA studio facility located at 209 W Elm Street, Tucson, AZ 85705;

9. all other real property, including fee simple interests and real property leasehold interests and renewal rights thereto, improvements to real property, and options to purchase any adjoining or other property, together with all buildings, facilities, and other structures;

10. all tangible personal property, including fixed assets, machinery and manufacturing equipment, tools, vehicles, inventory, materials, office equipment and furniture, computer hardware, and supplies;

11. all contracts, contractual rights, and customer relationships, and all other agreements, commitments, and understandings, including network affiliation agreements, supply agreements, teaming agreements, and leases, and all outstanding offers or solicitations to enter into a similar arrangement;

12. all licenses, permits, certifications, approvals, consents, registrations, waivers, and authorizations issued or granted by the FCC or any other governmental organization, and all pending applications or renewals;

13. all records and data, including (a) customer lists, accounts, sales, and credit records, (b) production, repair, maintenance, and performance records, (c) manuals and technical information Defendants provide to their own employees, customers, suppliers, agents, or licensees, (d) records and research data concerning historic and current research and development activities, including designs of experiments and the results of successful and unsuccessful designs and experiments, and (e) drawings, blueprints, and designs;

14. all intellectual property owned, licensed, or sublicensed, either as licensor or licensee, including (a) patents, patent applications, and inventions and discoveries that may be patentable, (b) registered and unregistered copyrights and copyright applications, and (c) registered and unregistered trademarks, trade dress, service marks, trade names, and trademark applications; and

15. all other intangible property, including (a) commercial names and d/b/a names, (b) technical information, (c) computer software and related documentation, know-how, trade secrets, design protocols, specifications for materials, specifications for parts, specifications for devices, safety procedures (*e.g.,* for the handling of materials and substances), quality assurance and control procedures, (d) design tools and simulation capabilities, and (e) rights in internet websites and internet domain names; *provided, however,* that the assets specified in Paragraphs II(G)(1)–(15) above do not include the Excluded Assets.

H. ''Divestiture Date'' means the date the Divestiture Assets are divested to Acquirer.

I. ''Divestiture Stations'' means KPOB–TV, KVOA, KWWL, WAOW, WKOW, WMOW, WQOW, WREX, WSIL–TV, and WXOW.

J. ''DMA'' means Designated Market Area as defined by The Nielsen Company (US), LLC, based upon viewing patterns and used by BIA Advisory Services' *Investing in Television Market Report 2020* (1st edition).

K. ''Excluded Assets'' means

1. the CW affiliation agreement and programming stream (including any syndicated programming), receiver, program logs and related materials, related intellectual property and domain names, relating to KWWL and/or the Cedar Rapids-Waterloo-Iowa City-Dubuque, Iowa, DMA;

2. the CW affiliation agreement and programming stream (including any syndicated programming), receiver, program logs and related materials, related intellectual property and domain names, relating to WMOW, WAOW and/or the Wausau-Rhinelander, Wisconsin, DMA;

3. the CW affiliation agreement and programming stream (including any syndicated programming), receiver, program logs and related materials, related intellectual property and domain names, relating to WREX and/or the Rockford, Illinois, DMA;

4. the CW affiliation agreement and programming stream (including any syndicated programming), receiver, program logs and related materials, related intellectual property and domain names, relating to WXOW, WQOW, and/or the La Crosse-Eau Claire, Wisconsin, DMA;

5. the MeTV affiliation agreement and programming stream (including any syndicated programming), receiver, program logs and related materials, related intellectual property and domain names, relating to WKOW and/or the Madison, Wisconsin, DMA;

6. the MeTV affiliation agreement and programming stream (including any syndicated programming), receiver, program logs and related materials, related intellectual property and domain names, relating to WXOW, WQOW, and/or the La Crosse-Eau Claire, Wisconsin, DMA;

7. satellite station WYOW, Eagle River, Wisconsin and transmitter facilities located at 6425 Thunderlake Road in Rhinelander, Wisconsin 54501;

8. all real and tangible personal property owned by Quincy located at 501 and 513 Hampshire Street in Quincy, Illinois 62301;

9. all tangible personal property owned by Quincy located at 130 South 5th Street, Quincy, Illinois 62301; and

10. all real and tangible personal property owned by Quincy at the Digital Realty Data Center located at 350 East Cermak, Chicago, Illinois 60616.

L. ''FCC'' means the Federal Communications Commission.

M. ''Overlap DMAs'' means the following seven DMAs: Tucson, Arizona; Madison, Wisconsin; Rockford, Illinois; Paducah, Kentucky-Cape Girardeau, Missouri-Harrisburg-Mt. Vernon, Illinois; Cedar Rapids-Waterloo-Iowa City-Dubuque, Iowa; La Crosse-Eau Claire, Wisconsin; and Wausau-Rhinelander, Wisconsin.

N. ''Relevant Personnel'' means all full-time, part-time, or contract employees of Defendants, wherever located, whose job responsibilities primarily relate to the operation or management of the Divestiture Stations, at any time between February 1, 2021, and the Divestiture Date. The United States, in its sole discretion, will resolve any disagreement regarding which employees are Relevant Personnel.

O. ''KPOB–TV'' means the ABC-affiliated broadcast station bearing that call sign located in the Paducah, Kentucky-Cape Girardeau, Missouri-Harrisburg-Mt. Vernon, Illinois, DMA and owned by Quincy.

P. ''KVOA'' means the NBC-affiliated broadcast station bearing that call sign located in the Tucson, Arizona, DMA and owned by Quincy.

Q. ''KWWL'' means the NBC-affiliated broadcast station bearing that call sign located in the Cedar Rapids-Waterloo-Iowa City-Dubuque, Iowa, DMA and owned by Quincy.

R. ''WAOW'' means the ABC-affiliated broadcast station bearing that call sign located in the Wausau-Rhinelander, Wisconsin, DMA and owned by Quincy.

S. ''WIFR–LD'' means the CBS-affiliated broadcast station bearing that call sign located in the Rockford, Illinois, DMA and owned by Gray.

T. ''WKOW'' means the ABC-affiliated broadcast station bearing that call sign located in the Madison, Wisconsin DMA and owned by Quincy.

U. ''WMOW'' means the ABC-affiliated broadcast station bearing that call sign located in the Wausau-Rhinelander, Wisconsin, DMA and owned by Quincy.

V. ''WREX'' means the NBC-affiliated broadcast station bearing that call sign located in the Rockford, Illinois, DMA and owned by Quincy.

W. ''WSIL–TV'' means the ABC-affiliated broadcast station bearing that call sign located in the Paducah, Kentucky-Cape Girardeau, Missouri-Harrisburg-Mt. Vernon, Illinois, DMA and owned by Quincy.

X. ''WQOW'' means the ABC-affiliated broadcast station bearing that call sign located in the La Crosse-Eau Claire, Wisconsin, DMA and owned by Quincy.

Y. ''WXOW'' means the ABC-affiliated broadcast station bearing that call sign located in the La Crosse-Eau Claire, Wisconsin, DMA and owned by Quincy.

Z. ''WYOW'' means the satellite broadcast station bearing that call sign located in the Wausau-Rhinelander, Wisconsin, DMA and owned by Quincy.

III. Applicability

A. This Final Judgment applies to Gray and Quincy, as defined above, and all other persons, in active concert or participation with any Defendant, who receive actual notice of this Final Judgment.

B. If, prior to complying with Section IV and Section V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of business units that include the Divestiture Assets, Defendants must require any purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from Acquirer.

IV. Divestiture

A. Defendants are ordered and directed, within thirty (30) calendar days after the Court's entry of the Hold Separate Stipulation and Order in this matter to divest the Divestiture Assets in a manner consistent with this Final Judgment to Allen or another Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total and will notify the Court of any extensions.

B. If within the period required for divestiture in Paragraph IV(A), applications have been filed with the FCC seeking approval to assign or transfer licenses to Acquirer, but an order or other dispositive action by the FCC on such applications has not been issued before the end of the period required for divestiture, the required divestiture period shall be extended for any Divestiture Assets for which an FCC order has not been issued until five (5) business days after an FCC order is issued. Defendants must use best efforts to obtain all required FCC approvals as expeditiously as possible.

C. Defendants must use best efforts to divest the Divestiture Assets as expeditiously as possible and may not take any action to impede the permitting, operation, or divestiture of the Divestiture Assets. Defendants must take no action that would jeopardize the divestiture ordered by the Court.

D. Unless the United States otherwise consents in writing, divestiture pursuant to this Final Judgment must include the entire Divestiture Assets and must be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by Acquirer as part of a viable, ongoing commercial television broadcasting business and that the divestiture to Acquirer will remedy the competitive harm alleged in the Complaint.

E. The divestiture must be made to an Acquirer that, in the United States' sole judgment, has the intent and capability, including the necessary managerial, operational, technical, and financial capability, to compete effectively in the business of commercial television broadcasting.

F. The divestiture must be accomplished in a manner that satisfies the United States, in its sole discretion, that none of the terms of any agreement between Acquirer and Defendants gives Defendants the ability unreasonably to raise Acquirer's costs, to lower Acquirer's efficiency, or otherwise interfere in the ability of Acquirer to compete effectively in the business of commercial television broadcasting in the Overlap DMAs.

G. Divestiture of the Divestiture Assets may be made to one or more Acquirers, provided that it is demonstrated to the sole satisfaction of the United States that the criteria required by Paragraphs IV(D), IV(E), and IV(F) will still be met.

H. In the event Defendants are attempting to divest the Divestiture Assets to an Acquirer other than Allen, Defendants promptly must make known, by usual and customary means, the availability of the Divestiture Assets. Defendants must inform any person making an inquiry relating to a possible purchase of the Divestiture Assets that the Divestiture Assets are being divested in accordance with this Final Judgment and must provide that person with a copy of this Final Judgment. Defendants must offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets that are customarily provided in a due-diligence process; *provided, however,* that Defendants need not provide information or documents subject to the attorney-client privilege or work-product doctrine. Defendants must make all information and documents available to the United States at the same time that the information and documents are made available to any other person.

I. Defendants must provide prospective Acquirers with (1) access to personnel and to make inspections of the Divestiture Assets; (2) access to all environmental, zoning, and other permitting documents and information relating to the Divestiture Assets; and (3) access to all financial, operational, or other documents and information relating to the Divestiture Assets that would customarily be provided as part of a due diligence process. Defendants also must disclose all encumbrances on any part of the Divestiture Assets, including on intangible property.

J. Defendants must cooperate with and assist Acquirer in identifying and, at the option of Acquirer, in hiring all Relevant Personnel, including:

1. Within ten (10) business days following the filing of the Complaint in this matter, Defendants must identify all Relevant Personnel to Acquirer and the United States, including by providing organization charts covering all Relevant Personnel.

2. Within ten (10) business days following receipt of a request by Acquirer or the United States, Defendants must provide to Acquirer and the United States additional information relating to Relevant Personnel, including name, job title, reporting relationships, past experience, responsibilities, training and educational histories, relevant certifications, and job performance evaluations. Defendants must also provide to Acquirer and the United States current, and accrued compensation and benefits, including most recent bonuses paid, aggregate annual compensation current target or

guaranteed bonus, if any, any retention agreement or incentives, and any other payments due, compensation or benefits accrued, or promises made to the Relevant Personnel. If Defendants are barred by any applicable law from providing any of this information, Defendants must provide, within ten (10) business days following receipt of the request, the requested information to the full extent permitted by law and also must provide a written explanation of Defendants' inability to provide the remaining information, including specifically identifying the provisions of the applicable laws.

3. At the request of Acquirer, Defendants must promptly make Relevant Personnel available for private interviews with Acquirer during normal business hours at a mutually agreeable location.

4. Defendants must not interfere with any effort by Acquirer to employ any Relevant Personnel. Interference includes offering to increase the compensation or improve the benefits of Relevant Personnel unless (a) the offer is part of a company-wide increase in compensation or improvement in benefits that was announced prior to February 1, 2021 or (b) the offer is approved by the United States in its sole discretion. Defendants' obligations under this Paragraph will expire sixty (60) calendar days after the Divestiture Date.

5. For Relevant Personnel who elect employment with Acquirer within sixty (60) calendar days of the Divestiture Date, Defendants must waive all non-compete and non-disclosure agreements; vest and pay to the Relevant Personnel (or to Acquirer for payment to the employee) on a prorated basis any bonuses, incentives, other salary, benefits or other compensation fully or partially accrued at the time of the transfer of the employee to Acquirer; vest any unvested pension and other equity rights; and provide all other benefits that those Relevant Personnel otherwise would have been provided had the Relevant Personnel continued employment with Defendants, including any retention bonuses or payments. Defendants may maintain reasonable restrictions on disclosure by Relevant Personnel of Defendants' proprietary non-public information that is unrelated to the operation of a commercial broadcast television station and not otherwise required to be disclosed by this Final Judgment.

K. Defendants must warrant to Acquirer that (1) the Divestiture Assets will be operational and without material defect on the date of their transfer to Acquirer; and (2) there are no material defects in the environmental, zoning, or other permits relating to the operation of the Divestiture Assets. Following the sale of the Divestiture Assets, Defendants must not undertake, directly or indirectly, challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

L. Defendants must assign, subcontract, or otherwise transfer all contracts, agreements, and relationships (or portions of such contracts, agreements, and relationships) included in the Divestiture Assets, including all supply and sales contracts and swap agreements, to Acquirer; *provided, however,* that for any contract or agreement that requires the consent of another party to assign, subcontract, or otherwise transfer, Defendants must use best efforts to accomplish the assignment, subcontracting, or transfer. Defendants must not interfere with any negotiations between Acquirer and a contracting party.

M. Defendants must use best efforts to assist Acquirer to obtain all necessary licenses, registrations, and permits to operate the Divestiture Assets. Until Acquirer obtains the necessary licenses, registrations, and permits, Defendants must provide Acquirer with the benefit of Defendants' licenses, registrations, and permits to the full extent permissible by law.

N. At the option of Acquirer, and subject to approval by the United States in its sole discretion, on or before the Divestiture Date, Defendants must enter into a contract to provide transition services for back office, human resources, accounting, and information technology services and support for a period of up to six (6) months on terms and conditions reasonably related to market conditions for the provision of the transition services. Any amendment to or modification of any provision of a contract to provide transition services is subject to approval by the United States, in its sole discretion. The United States, in its sole discretion, may approve one or more extensions of any contract for transition services, for a total of up to an additional six (6) months. If Acquirer seeks an extension of the term of any transition services contract, Defendants must notify the United States in writing at least one (1) month prior to the date the contract expires or, if Acquirer requests an extension less than one month prior to the date the contract expires, within two (2) days of the Acquirer's extension request. Acquirer may terminate a contract for transition services, or any portion of a contract for transition services, without cost or penalty at any time upon at least five (5) calendar days' written notice. The employee(s) of Defendants tasked with providing transition services must not share any competitively sensitive information of Acquirer with any other employee of Defendants.

O. If any term of an agreement between Defendants and Acquirer to effectuate the divestiture required by this Final Judgment varies from a term of this Final Judgment, to the extent that Defendants cannot fully comply with both, this Final Judgment determines Defendants' obligations. Authorization by the FCC to conduct the divestiture of a Divestiture Asset in a particular manner will not change or modify any of the requirements of this Final Judgment.

V. Appointment of Divestiture Trustee

A. If Defendants have not divested the Divestiture Assets within the time period specified in Paragraphs IV(A) and IV(B), Defendants must immediately notify the United States of that fact in writing. Upon application of the United States, which Defendants may not oppose, the Court will appoint a divestiture trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a divestiture trustee by the Court, only the divestiture trustee will have the right to sell the Divestiture Assets. The divestiture trustee will have the power and authority to accomplish the divestiture to an Acquirer or Acquirers acceptable to the United States, in its sole discretion, at a price and on terms obtainable through reasonable effort by the divestiture trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and will have other powers as the Court deems appropriate. The divestiture trustee must sell the Divestiture Assets as quickly as possible.

C. Defendants may not object to a sale by the divestiture trustee on any ground other than malfeasance by the divestiture trustee. Objections by Defendants must be conveyed in writing to the United States and the divestiture trustee within ten (10) calendar days after the divestiture trustee has provided the notice of proposed divestiture required by Section VI.

D. The divestiture trustee will serve at the cost and expense of Defendants pursuant to a written agreement, on terms and conditions, including confidentiality requirements and conflict-of-interest certifications, approved by the United States in its sole discretion.

E. The divestiture trustee may hire at the cost and expense of Defendants any agents or consultants, including investment bankers, attorneys, and accountants, that are reasonably necessary in the divestiture trustee's judgment to assist with the divestiture trustee's duties. These agents or consultants will be accountable solely to the divestiture trustee and will serve on terms and conditions, including confidentiality requirements and conflict-of-interest certifications, approved by the United States in its sole discretion.

F. The compensation of the divestiture trustee and agents or consultants hired by the divestiture trustee must be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement that provides the divestiture trustee with incentives based on the price and terms of the divestiture(s) and the speed with which it is accomplished. If the divestiture trustee and Defendants are unable to reach agreement on the divestiture trustee's compensation or other terms and conditions of engagement within fourteen (14) calendar days of the appointment of the divestiture trustee by the Court, the United States, in its sole discretion, may take appropriate action, including by making a recommendation to the Court. Within three (3) business days of hiring an agent or consultant, the divestiture trustee must provide written notice of the hiring and rate of compensation to Defendants and the United States.

G. The divestiture trustee must account for all monies derived from the sale of the Divestiture Assets sold by the divestiture trustee and all costs and expenses incurred. Within thirty (30) calendar days of the Divestiture Date, the divestiture trustee must submit that accounting to the Court for approval. After approval by the Court of the divestiture trustee's accounting, including fees for unpaid services and those of agents or consultants hired by the divestiture trustee, all remaining money must be paid to Defendants and the trust will then be terminated.

H. Defendants must use best efforts to assist the divestiture trustee to accomplish the required divestiture. Subject to reasonable protection for trade secrets, other confidential research, development, or commercial information, or any applicable privileges, Defendants must provide the divestiture trustee and agents or consultants retained by the divestiture trustee with full and complete access to all personnel, books, records, and facilities of the Divestiture Assets. Defendants also must provide or develop financial and other information relevant to the Divestiture Assets that the divestiture trustee may reasonably request. Defendants must not take any action to interfere with or to impede the divestiture trustee's accomplishment of the divestiture.

I. The divestiture trustee must maintain complete records of all efforts made to sell the Divestiture Assets, including by filing monthly reports with the United States setting forth the divestiture trustee's efforts to accomplish the divestiture ordered by this Final Judgment. The reports must include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring any interest in the Divestiture Assets and must describe in detail each contact.

J. If the divestiture trustee has not accomplished the divestiture ordered by this Final Judgment within six months of appointment, the divestiture trustee must promptly provide the United States with a report setting forth: (1) The divestiture trustee's efforts to accomplish the required divestiture; (2) the reasons, in the divestiture trustee's judgment, why the required divestiture has not been accomplished; and (3) the divestiture trustee's recommendations for completing the divestiture. Following receipt of that report, the United States may make additional recommendations to the Court. The Court thereafter may enter such orders as it deems appropriate to carry out the purpose of this Final Judgment, which may include extending the trust and the term of the divestiture trustee's appointment by a period requested by the United States.

K. The divestiture trustee will serve until divestiture of all Divestiture Assets is completed or for a term otherwise ordered by the Court.

L. If the United States determines that the divestiture trustee is not acting diligently or in a reasonably cost-effective manner, the United States may recommend that the Court appoint a substitute divestiture trustee.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement with an Acquirer other than Allen to divest the Divestiture Assets, Defendants or the divestiture trustee, whichever is then responsible for effecting the divestiture, must notify the United States of the proposed divestiture. If the divestiture trustee is responsible for completing the divestiture, the divestiture trustee also must notify Defendants. The notice must set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets.

B. Within fifteen (15) calendar days of receipt by the United States of this notice, the United States may request from Defendants, the proposed Acquirer(s), other third parties, or the divestiture trustee additional information concerning the proposed divestiture, the proposed Acquirer(s), and other prospective Acquirers. Defendants and the divestiture trustee must furnish the additional information requested within fifteen (15) calendar days of the receipt of the request, unless the United States provides written agreement to a different period.

C. Within forty-five (45) calendar days after receipt of the notice required by Paragraph VI(A) or within twenty (20) calendar days after the United States has been provided the additional information requested pursuant to Paragraph VI(B), whichever is later, the United States must provide written notice to Defendants and any divestiture trustee that states whether the United States, in its sole discretion, objects to Acquirer(s) or any other aspect of the proposed divestiture. Without written notice that the United States does not object, a divestiture may not be consummated. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Paragraph V(C) of this Final Judgment. Upon objection by Defendants pursuant to Paragraph V(C), a divestiture by the divestiture trustee may not be consummated unless approved by the Court.

D. No information or documents obtained pursuant to this Section VI may be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party, including grand-jury proceedings, for the purpose of evaluating a proposed Acquirer or securing compliance with this Final Judgment, or as otherwise required by law.

E. In the event of a request by a third party for disclosure of information under the Freedom of Information Act, 5 U.S.C. 552, the Antitrust Division will act in accordance with that statute and the Department of Justice regulations at

28 CFR part 16, including the provision on confidential commercial information at 28 CFR 16.7. Persons submitting information to the Antitrust Division should designate the confidential commercial information portions of all applicable documents and information under 28 CFR 16.7. Designations of confidentiality expire ten years after submission, ''unless the submitter requests and provides justification for a longer designation period.'' *See* 28 CFR 16.7(b).

F. If at the time that a person furnishes information or documents to the United States pursuant to this Section VI, that person represents and identifies in writing information or documents for which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' the United States must give that person ten (10) calendar days' notice before divulging the material in any legal proceeding (other than a grand-jury proceeding).

VII. Financing

Defendants may not finance all or any part of any Acquirer's purchase of all or part of the Divestiture Assets.

VIII. Hold Separate

Defendants must take all steps necessary to comply with the Hold Separate Stipulation and Order entered by the Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture required by this Final Judgment has been completed, each Defendant must deliver to the United States an affidavit, signed by each Defendant's Chief Financial Officer and General Counsel, describing in reasonable detail the fact and manner of that Defendant's compliance with this Final Judgment. The United States, in its sole discretion, may approve different signatories for the affidavits.

B. Each affidavit required by Paragraph IX(A) must include: (1) The name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, an interest in the Divestiture Assets and describe in detail each contact with such persons during that period; (2) a description of the efforts Defendants have taken to solicit buyers for and complete the sale of the Divestiture Assets, including efforts to secure other regulatory approvals, and to provide required information to prospective Acquirers; and (3) a description of any limitations placed by Defendants on information provided to prospective Acquirers. Objection by the United States to information provided by Defendants to prospective Acquirers must be made within fourteen (14) calendar days of receipt of the affidavit, except that the United States may object at any time if the information set forth in the affidavit is not true or complete.

C. Defendants must keep all records of any efforts made to divest the Divestiture Assets until one year after the Divestiture Date.

D. Within twenty (20) calendar days of the filing of the Complaint in this matter, each Defendant must deliver to the United States an affidavit signed by each Defendant's Chief Financial Officer and General Counsel, that describes in reasonable detail all actions that Defendant has taken and all steps that Defendants has implemented on an ongoing basis to comply with Section VIII of this Final Judgment. The United States, in its sole discretion, may approve different signatories for the affidavits.

E. If a Defendant makes any changes to the efforts and actions described in affidavits provided pursuant to Paragraph IX(D), Defendant must, within fifteen (15) calendar days after any change is implemented, deliver to the United States an affidavit describing those changes.

F. Defendants must keep all records of any efforts made to comply with Section VIII until one year after the Divestiture Date.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as the Hold Separate Stipulation and Order or of determining whether this Final Judgment should be modified or vacated, upon written request of an authorized representative of the Assistant Attorney General for the Antitrust Division, and reasonable notice to Defendants, Defendants must permit, from time to time and subject to legally recognized privileges, authorized representatives, including agents retained by the United States:

(1) To have access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide electronic copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, relating to any matters contained in this Final Judgment. The interviews must be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General for the Antitrust Division, Defendants must submit written reports or respond to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment.

C. No information or documents obtained by the United States pursuant to this Section X may be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party, including grand jury proceedings, for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. In the event of a request by a third party for disclosure of information under the Freedom of Information Act, 5 U.S.C. 552, the Antitrust Division will act in accordance with that statute and the Department of Justice regulations at 28 CFR part 16, including the provision on confidential commercial information at 28 CFR 16.7. Defendants submitting information to the Antitrust Division should designate the confidential commercial information portions of all applicable documents and information under 28 CFR 16.7. Designations of confidentiality expire ten years after submission, ''unless the submitter requests and provides justification for a longer designation period.'' *See* 28 CFR 16.7(b).

E. If at the time that Defendants furnish information or documents to the United States pursuant to this Section X, Defendants represent and identify in writing information or documents for which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' the United States must give Defendants ten (10) calendar days' notice before divulging the material in any legal

proceeding (other than a grand jury proceeding).

XI. Notification

A. Unless a transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the ''HSR Act''), Defendants may not, without first providing notification to the United States, directly or indirectly acquire (including through an asset swap agreement) any Big Four Affiliation Agreement in a DMA in which either Defendant has an existing Big Four Affiliation Agreement in place.

B. Defendants must provide the notification required by this Section XI in the same format as, and in accordance with the instructions relating to, the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5 through 8 of the instructions must be provided only about the business of commercial television broadcasting. Notification must be provided at least thirty (30) calendar days before acquiring any assets or interest, and must include, beyond the information required by the instructions, the names of the principal representatives who negotiated the transaction on behalf of each party and all management or strategic plans discussing the proposed transaction. If, within the thirty (30) calendar days following notification, representatives of the United States make a written request for additional information, Defendants may not consummate the proposed transaction until thirty (30) calendar days after submitting all requested information.

C. Early termination of the waiting periods set forth in this Section XI may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section XI must be broadly construed and any ambiguity or uncertainty relating to whether to file a notice under this Section XI must be resolved in favor of filing notice.

XII. No Reacquisition and Limitations on Collaborations

A. Unless approved by the United States in its sole discretion, during the term of this Final Judgment, Defendants may not (1) reacquire any part of or any interest in the Divestiture Assets; (2) acquire any option to reacquire any part of the Divestiture Assets or to assign any part of the Divestiture Assets to any other person; (3) enter into or expand the scope of any Cooperative Agreement relating to the Divestiture Assets; (4) conduct any business negotiations jointly with any Acquirer relating to the Divestiture Assets divested to such Acquirer; or (5) provide financing or guarantees of financing with respect to the Divestiture Assets.

B. Paragraph XII(A)(3) does not preclude Defendants from:

1. Continuing existing agreements or entering into new agreements in a form customarily used in the industry to (a) share news helicopters or (b) pool generic video footage that does not include recording a reporter or other on-air talent, and does not preclude Defendants from entering into any non-sales-related shared services agreement approved by the United States in its sole discretion;

2. entering into agreements to provide news programming to broadcast television stations included in the Divestiture Assets, provided that Defendants do not sell, price, market, hold out for sale, or profit from the sale of advertising associated with the news programming provided by Defendants under such agreements except by approval of the United States in its sole discretion; or

3. rebroadcasting WIFR–LD's CBS program stream on a digital subchannel of WREX, provided that (1) Acquirer rebroadcasts the WIFR–LD CBS program stream on a pass-through basis and coextensively with its main WREX signal, and (2) Defendants and Acquirer continue to operate WIFR–LD and WREX as separate commercial broadcast television stations with no common ownership or control, revenue sharing, or joint sales.

XIII. Retention of Jurisdiction

The Court retains jurisdiction to enable any party to this Final Judgment to apply to the Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIV. Enforcement of Final Judgment

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. Defendants agree that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of the decree and the appropriateness of any remedy therefor by a preponderance of the evidence, and Defendants waive any argument that a different standard of proof should apply.

B. The Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore the competition the United States alleges was harmed by the challenged conduct. Defendants agree that they may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In an enforcement proceeding in which the Court finds that Defendants have violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with other relief that may be appropriate. In connection with a successful effort by the United States to enforce this Final Judgment against a Defendant, whether litigated or resolved before litigation, that Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as all other costs including experts' fees, incurred in connection with that enforcement effort, including in the investigation of the potential violation.

XV. Expiration of Final Judgment

Unless the Court grants an extension, this Final Judgment will expire ten (10) years from the date of its entry, except that after five (5) years from the date of its entry, this Final Judgment may be terminated upon notice by the United States, to the Court and Defendants that the divestiture has been completed and continuation of this Final Judgment is no longer necessary or in the public interest.

XVI. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including by making available to the public copies of this Final Judgment and the Competitive Impact Statement, public comments thereon, and any response to comments by the United States. Based upon the record before the Court, which includes the Competitive Impact Statement and, if applicable, any comments and response to comments filed with the

Court, entry of this Final Judgment is in the public interest.

Date: _____

[Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16]

_____

United States District Judge

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Gray Television, Inc.,* and *Quincy Media, Inc.,* Defendants.
Case No.: 1:21–cv–02041–CJN
Judge: Carl J. Nichols

Competitive Impact Statement

In accordance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (the ''APPA'' or ''Tunney Act''), the United States of America files this Competitive Impact Statement relating to the proposed Final Judgment filed in this civil antitrust proceeding.

IX. Nature and Purpose of the Proceeding

On January 31, 2021, Defendant Gray Television, Inc. (''Gray'') agreed to acquire Defendant Quincy Media, Inc. (''Quincy'') for approximately $925 million in cash. The United States filed a civil antitrust Complaint on July 28, 2021, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to substantially lessen competition for licensing the television programming of NBC, CBS, ABC, and FOX (collectively, ''Big Four'') affiliate stations to cable, satellite, fiber optic television, and over-the-top providers (referred to collectively as multichannel video programming distributors, or ''MVPDs'') for retransmission to their subscribers and the sale of broadcast television spot advertising in seven local geographic markets in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. The seven Designated Market Areas (''DMAs'') in which a substantial reduction in competition is alleged are: (i) Tucson, Arizona; (ii) Madison, Wisconsin; (iii) Rockford, Illinois; (iv) Paducah, Kentucky/Cape Girardeau, Missouri/Harrisburg-Mt. Vernon, Illinois; (v) Cedar Rapids-Waterloo-Iowa City-Dubuque, Iowa; (vi) La Crosse-Eau Claire, Wisconsin; and (vii) Wausau-Rhinelander, Wisconsin (collectively, ''the Overlap DMAs'').[3] In each Overlap DMA, Gray and Quincy each own at least one broadcast television station that is affiliated with one of the Big Four television networks. The loss of competition alleged in the Complaint likely would result in an increase in retransmission consent fees charged to MVPDs, much of which would be passed through to MVPD subscribers, and higher prices for broadcast television spot advertising in each Overlap DMA.

At the same time the Complaint was filed, the United States filed a proposed Final Judgment and Hold Separate Stipulation and Order (''Stipulation and Order''), which are designed to remedy the loss of competition alleged in the Complaint. Under the proposed Final Judgment, which is explained more fully below, Defendants are required to divest the following broadcast television stations (the ''Divestiture Stations'') and related assets to an acquirer or acquirers acceptable to the United States in its sole discretion: KPOB–TV and WSIL–TV in the Paducah, Kentucky/Cape Girardeau, Missouri/Harrisburg-Mt. Vernon, Illinois, DMA; KVOA in the Tucson, Arizona, DMA; KWWL in the Cedar Rapids-Waterloo-Iowa City-Dubuque, Iowa, DMA; WAOW and WMOW in the Wausau-Rhinelander, Wisconsin, DMA; WKOW in the Madison, Wisconsin, DMA; WQOW and WXOW in the La Crosse-Eau Claire, Wisconsin, DMA; and WREX in the Rockford, Illinois, DMA.

Under the terms of the Stipulation and Order, Defendants must take certain steps to ensure that each Divestiture Station is operated as a competitively independent, economically viable, and ongoing business concern, which must remain independent and uninfluenced by Defendants, and that competition is maintained during the pendency of the required divestiture.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

X. Description of Events Giving Rise to the Alleged Violation

(A) The Defendants and the Proposed Transaction

Gray is a Georgia corporation with its headquarters in Atlanta, Georgia. Gray owns 165 television stations in 94 DMAs, of which 139 are Big Four affiliates. In 2020, Gray reported revenues of $2.4 billion.

Quincy is an Illinois corporation with its headquarters in Quincy, Illinois. Quincy owns 20 television stations in 16 DMAs, of which 19 are Big Four affiliates. In 2020, Quincy had revenues of approximately $338 million.

(B) The Competitive Effects of the Transaction in the Market for Big Four Television Retransmission Consent

1. Background

MVPDs, such as Comcast, DirecTV, and Mediacom, typically pay the owner of each local Big Four broadcast station in a given DMA a per-subscriber fee for the right to retransmit the station's content to the MVPDs' subscribers. The per-subscriber fee and other terms under which an MVPD is permitted to distribute a station's content to its subscribers are set forth in a retransmission agreement. A retransmission agreement is negotiated directly between a broadcast station group, such as Gray or Quincy, and a given MVPD, and this agreement typically covers all of the station group's stations located in the MVPD's service area, or ''footprint.''

2. Relevant Markets

Big Four broadcast content has special appeal to television viewers in comparison to the content that is available through other broadcast stations and cable networks. Big Four stations usually are the highest ranked in terms of audience share and ratings in each DMA, largely because of unique offerings such as local news, sports, and highly-ranked primetime programs. Viewers typically consider the Big Four stations to be close substitutes for one another. Because of Big Four stations' popular national content and valued local coverage, MVPDs regard Big Four programming as highly desirable for inclusion in the packages they offer subscribers. Non-Big Four broadcast stations are typically not close substitutes for viewers of Big Four stations. Stations that are affiliates of networks other than the Big Four, such as the CW Network, MyNetworkTV, or Telemundo, typically feature niche programming without local news, weather or sports—or, in the case of

[3] A DMA is a geographic unit for which The Nielsen Company (US), LLC—a firm that surveys television viewers—furnishes broadcast television stations, MVPDs, cable networks, advertisers, and advertising agencies in a particular area with data to aid in evaluating audience size and composition. DMAs are widely accepted by industry participants as the standard geographic areas to use in evaluating television audience size and demographic composition. The Federal Communications Commission (''FCC'') also uses DMAs as geographic units with respect to its broadcast television regulations.

Telemundo, only offer local news, weather, and sports aimed at a Spanish-speaking audience. Stations that are unaffiliated with any network are similarly unlikely to carry programming with broad popular appeal.

If an MVPD suffers a blackout of a Big Four station in a given DMA, many of the MVPD's subscribers in that DMA are likely to turn to other Big Four stations in the DMA to watch similar content, such as sports, primetime shows, and local news and weather. This willingness of viewers to switch between competing Big Four broadcast stations limits an MVPD's expected losses in the case of a blackout, and thus limits a broadcaster's ability to extract higher fees from that MVPD—since an MVPD's willingness to pay higher retransmission consent fees for content rises or falls with the harm it would suffer if that content were lost. Due to the limited programming typically offered by non-Big Four stations, viewers are much less likely to switch to a non-Big Four station than to switch to other Big Four stations in the event of a blackout of a Big Four station. Accordingly, competition from non-Big Four stations does not typically impose a significant competitive constraint on the retransmission consent fees charged by the owners of Big Four stations. For the same reasons, subscribers—and therefore MVPDs—generally do not view cable network programming as a close substitute for Big Four network content. This is primarily because cable networks offer different content than Big Four stations. For example, cable networks generally do not offer local news, which provides a valuable connection to the local community that is important to viewers of Big Four stations.

Because viewers do not regard non-Big Four broadcast stations or cable networks as close substitutes for the programming they receive from Big Four stations, these other sources of programming are not sufficient to discipline an increase in the fees charged for Big Four television retransmission consent. Accordingly, a small but significant increase in the retransmission consent fees of Big Four affiliates would not cause enough MVPDs to forego carrying the content of the Big Four stations to make such an increase unprofitable for the Big Four stations.

The relevant geographic markets for the licensing of Big Four television retransmission consent are the individual DMAs in which such licensing occurs. The Complaint alleges a substantial reduction of competition in the market for the licensing of Big Four television retransmission consent in the Overlap DMAs.

In the event of a blackout of a Big Four network station, FCC rules generally prohibit an MVPD from importing the same network's content from another DMA. Thus, MVPD subscribers in one DMA cannot switch to Big Four programming in another DMA in the face of a blackout. Therefore, substitution to stations outside the DMA cannot discipline an increase in the fees charged for retransmission consent for broadcast stations in the DMA.

3. Anticompetitive Effects

In each of the Overlap DMAs, Gray and Quincy each own at least one Big Four affiliate broadcast television station. By combining the Defendants' Big Four stations, the proposed merger would increase the Defendants' market shares in the licensing of Big Four television retransmission consent in each Overlap DMA, and would increase the market concentration in that business in each Overlap DMA. The chart below summarizes Defendants' approximate Big Four retransmission consent market shares, based on figures in BIA Advisory Services' *Investing in Television Market Report 2020* (1st edition), and market concentrations measured by the widely used Herfindahl-Hirschman Index (''HHI''),[4] in each Overlap DMA, before and after the proposed merger.

Overlap DMA	Gray share (%)	Quincy share (%)	Merged share (%)	Pre-merger HHI	Post-merger HHI	HHI increase
Tucson, AZ	30	24	54	2,564	4,010	1,446
Madison, WI	30	23	53	2,556	3,956	1,400
Paducah-Harrisburg, KY-IL	30	23	53	2,622	4,022	1,400
Cedar Rapids, IA	26	20	46	2,533	3,600	1,067
La Crosse-Eau Claire, WI	33	20	53	2,622	3,956	1,333
Rockford, IL	27	20	47	2,533	3,600	1,066
Wausau-Rhinelander, WI	44	33	77	3,580	6,543	2,963

As indicated by the preceding chart, in each Big Four Overlap DMA the post-merger HHI would exceed 2,500, and the merger would increase the HHI by more than 200 points. As a result, the proposed merger is presumed likely to enhance market power under the *Horizontal Merger Guidelines* issued by the Department of Justice and the Federal Trade Commission.

The proposed merger would enable Gray to black out more Big Four stations simultaneously in each of the Overlap DMAs than either Gray or Quincy could black out independently today, likely leading to increased retransmission consent fees to any MVPD whose footprint includes any of the Overlap DMAs. Retransmission consent fees generally are passed through to an MVPD's subscribers in the form of higher subscription fees or as a line item on their bills.

(C) The Competitive Effects of the Transaction in the Market for Broadcast Television Spot Advertising

1. Background

Broadcast television stations sell advertising ''spots'' during breaks in their programming. Advertisers purchase spots from a broadcast station to communicate with viewers within the DMA in which the broadcast television station is located. Broadcast television spot advertising is distinguished from ''network'' advertising, which consists

[4] The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 (30^2 + 30^2 + 20^2 + 20^2 = 2,600). The HHI takes into account the relative size distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size, and reaches its maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

of advertising time slots sold on nationwide broadcast networks by those networks, and not by local broadcast television stations or their representatives. Gray and Quincy each own at least one Big Four affiliated television station in each of the Overlap DMAs and compete with one another to sell broadcast television spot advertising in each of the Overlap DMAs.

2. Relevant Markets

Broadcast television spot advertising constitutes a relevant product market and line of commerce under Section 7 of the Clayton Act, 15 U.S.C. 18. Advertisers' inability or unwillingness to substitute to other types of advertising in response to a price increase in broadcast television spot advertising supports this relevant market definition.

Typically, an advertiser purchases broadcast television advertising spots as one component of an advertising strategy that may also include cable television advertising spots, newspaper advertisements, billboards, radio spots, digital advertisements, email advertisements, and direct mail. Different components of an advertising strategy generally target different audiences and serve distinct purposes. Advertisers that advertise on broadcast television stations do so because the stations offer popular programming such as local news, sports, and primetime and syndicated shows that are especially attractive to a broad demographic base and a large audience of viewers. Other categories of advertising may offer different characteristics, but are not close substitutes for broadcast television spot advertising. For example, ads associated with online search results target individual consumers or respond to specific keyword searches, whereas broadcast television spot advertising reaches a broad audience throughout a DMA. In the future, technological developments may bring various advertising categories into closer competition with each other. For example, broadcasters and cable networks are developing technology to make their spot advertising addressable, meaning that broadcasters could deliver targeted advertising in live broadcast and on-demand formats to smart televisions or streaming devices. For certain advertisers, these technological changes may make other categories of advertising closer substitutes for advertising on broadcast television in the future. However, at this time, for many broadcast television spot advertising advertisers, these projected developments are insufficient to mitigate the anticompetitive effects of the merger in the Overlap DMAs.

MVPDs sell spot advertising to be shown during breaks in cable network programming. For viewers, these advertisements are similar to broadcast television spot ads. However, cable television spot advertising is not at this time a reasonable substitute for broadcast television spot advertising for most advertisers. First, broadcast television spot advertising is a more efficient option than cable television spot advertising for many advertisers. Because broadcast television offers highly rated programming with broad appeal, each broadcast television advertising spot typically offers the opportunity to reach more viewers (more ''ratings points'') than a single spot on a cable channel. By contrast, MVPDs offer dozens of cable networks with specialized programs that appeal to niche audiences. This fragmentation allows advertisers to target narrower demographic subsets by buying cable spots on particular channels, but it does not meet the needs of advertisers who want to reach a large percentage of a DMA's population. Second, households that have access to cable networks are divided among multiple MVPDs within a DMA. In contrast, broadcast television spot advertising has a much broader reach because it reaches all households that subscribe to an MVPD and, through an over-the-air signal, most households with a television that do not. Third and finally, MVPDs' inventory of cable television spot advertising is limited—typically to two minutes per hour—contrasting sharply with broadcast stations' much larger number of advertising minutes per hour. The inventory of DMA-wide cable television spot advertising is substantially further reduced by the large portion of those spots allocated to local zone advertising, in which an MVPD sells spots by geographic zones within a DMA, allowing advertisers to target smaller geographic areas. Due to the limited inventories and lower ratings associated with cable television spot programming, cable television spot advertising does not offer a sufficient volume of ratings points, or broad enough household penetration, to provide a reasonable alternative to broadcast television spot advertising.

Digital advertising is also not a sufficiently close substitute for broadcast television spot advertising. Some digital advertising, such as static and floating banner advertisements, static images, text advertisements, wallpaper advertisements, pop-up advertisements, flash advertisements, and paid search results, lacks the combination of sight, sound, and motion that makes television spot advertising particularly impactful and memorable and therefore effective for advertisers. Digital video advertisements, on the other hand, do allow for a combination of sight, sound, and motion, and on this basis are more comparable to broadcast television spot advertising than other types of digital advertising. However, they are still not close substitutes for broadcast television spot advertising because digital advertisements typically have a different scope of reach compared to broadcast television spot advertising. For example, while advertisers use broadcast television spots to reach a large percentage of households within a given DMA, advertisers use digital advertising to reach a variety of different audiences. While a small portion of advertisers purchase DMA-wide advertisements on digital platforms, digital advertisements usually are targeted either very broadly, such as nationwide or regional, or to a geographic target smaller than a DMA, such as a city or a zip code, or to narrow demographic subsets of a population.

Other forms of advertising, such as radio, newspaper, billboard, and direct-mail advertising, also do not constitute effective substitutes for broadcast television spot advertising. These forms of media do not reach as many local viewers or drive brand awareness to the same extent as broadcast television spot advertising does. Broadcast television spot advertising possesses a unique combination of attributes that advertisers value in a way that sets it apart from advertising on other media. Broadcast television spot advertising combines sight, sound, and motion in a way that makes television advertisements particularly memorable and impactful.

The relevant geographic markets for the sale of broadcast television spot advertising are the individual DMAs in which such advertising is viewed. The Complaint alleges a substantial reduction of competition in the market for sale of broadcast television advertising in the Overlap DMAs. For an advertiser seeking to reach potential customers in a given DMA, broadcast television stations located outside of the DMA do not provide effective access to the advertiser's target audience. The signals of broadcast television stations located outside of the DMA generally do not reach any significant portion of the target DMA through either over-the-air signal or MVPD distribution. Accordingly, a small but significant increase in the spot advertising prices of stations broadcasting into the DMA would not cause a sufficient number of

advertisers to switch to stations outside the DMA to make such an increase unprofitable for the station.

3. Anticompetitive Effects

In each of the Overlap DMAs, Gray and Quincy each own at least one Big Four affiliate broadcast television station. By combining the Defendants' stations, the proposed merger would increase the Defendants' market shares in the sale of broadcast television spot advertising in each Overlap DMA, and would increase the market concentration in that business in each Overlap DMA. The chart below summarizes Defendants' approximate market shares, based on figures in BIA Advisory Services' *Investing in Television Market Report 2020* (1st edition), and the result of the transaction on the HHIs in the sale of broadcast television spot advertising.

Overlap DMA	Gray share (%)	Quincy share (%)	Merged share (%)	Pre-merger HHI	Post-merger HHI	HHI increase
Tucson, AZ	27	25	52	2,059	3,389	1,330
Madison, WI	31	20	51	2,540	3,745	1,205
Paducah-Harrisburg, KY-IL	26	22	48	2,886	4,022	1,136
Cedar Rapids, IA	41	34	75	3,108	5,852	2,744
La Crosse-Eau Claire, WI	33	23	56	2,587	4,084	1,497
Rockford, IL	28	35	63	3,348	5,319	1,971
Wausau-Rhinelander, WI	40	38	78	3,479	6,489	3,010

Defendants' large market shares reflect the fact that, in each Overlap DMA, Gray and Quincy each own one or more significant broadcast television stations. As indicated by the preceding chart, the post-merger HHI in each Overlap DMA is well above 2,500, and the HHI increase in each Overlap DMA far exceeds the 200-point threshold above which a transaction is presumed to enhance market power and harm competition under the *Horizontal Merger Guidelines.* Defendants' proposed transaction is thus presumptively unlawful in each Overlap DMA.

In addition to substantially increasing the concentration levels in each Overlap DMA, the proposed acquisition would combine Gray's and Quincy's broadcast television stations, which are generally close competitors in the sale of broadcast television spot advertising. In each Overlap DMA, Defendants' broadcast stations compete head-to-head in the sale of broadcast television spot advertising. Advertisers obtain lower prices as a result of this competition. In particular, advertisers in the Overlap DMAs can respond to an increase in one station's spot advertising prices by purchasing, or threatening to purchase, advertising spots on one or more stations owned by different broadcast station groups, thereby ''buying around'' the station that raises its prices. This practice allows the advertisers either to avoid the first station's price increase, or to pressure the first station to lower its prices. If Gray acquires Quincy's stations, advertisers seeking to reach audiences in the Overlap DMAs would have fewer competing broadcast television alternatives available to meet their advertising needs, and would find it more difficult and costly to buy around higher prices imposed by the combined stations. This would likely result in increased advertising prices, lower quality local programming to which the spot advertising is attached (for example, less investment in local news), and less innovation in providing advertising solutions to advertisers.

(D) Entry

De novo entry into each Overlap DMA is unlikely. The FCC regulates entry through the issuance of broadcast television licenses, which are difficult to obtain because the availability of spectrum is limited and the regulatory process associated with obtaining a license is lengthy. Even if a new signal were to become available, commercial success would come over a period of many years, if at all. Because Big Four affiliated stations generally have the highest ratings in each DMA, they are more successful at selling broadcast television spot ads compared to non-Big Four affiliated broadcast stations. Thus, entry of a new broadcast station into an Overlap DMA would not be timely, likely, or sufficient to prevent or remedy the proposed acquisition's likely anticompetitive effects in the relevant markets.

XI. Explanation of the Proposed Final Judgment

The relief required by the proposed Final Judgment will remedy the loss of competition alleged in the Complaint by establishing an independent and economically viable competitor in the markets for the licensing of Big Four television retransmission consent and the sale of broadcast television spot advertising. The proposed Final Judgment requires Defendants to divest the Divestiture Stations within 30 days after the entry of the Stipulation and Order to Allen Media Holdings, LLC (''Allen'') or an alternative acquirer approved by the United States. Where Defendants have filed applications with the FCC seeking approval to assign or transfer any licenses to acquirer, the 30-day time period will be extended until five business days after an FCC order has been issued. The assets must be divested in such a way as to satisfy the United States in its sole discretion that the assets can and will be operated by the acquirer as a viable, ongoing business that can compete effectively in the licensing of Big Four television retransmission consent and the sale of broadcast television spot advertising. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly, including obtaining any necessary FCC approvals as expeditiously as possible, and must cooperate with the acquirer.

(A) The Divestiture Assets

The Divestiture Assets, which are defined in Paragraph II(G) of the proposed Final Judgment, include all tangible and intangible assets of the Divestiture Stations. The assets include all tangible property; all licenses, permits, and authorizations; all contracts (including programming contracts and rights), agreements, network affiliation agreements, leases, and commitments and understandings; all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials, and promotional materials; all customer lists, contracts, accounts, and credit records; all logs and other records; and the content and affiliation of each digital subchannel.

(B) The Excluded Assets

Certain assets are excluded from the Divestiture Assets, as described in Paragraph II(J) of the proposed Final Judgment. The assets that are excluded

relate to: (1) The CW programming stream currently broadcast on KWWL in the Cedar Rapids-Waterloo-Iowa City-Dubuque, Iowa, DMA; (2) the CW programming stream currently broadcast on WMOW and WAOW in the Wausau-Rhinelander, Wisconsin, DMA; (3) the CW programming stream currently broadcast on WREX in the Rockford, Illinois, DMA; (4) the CW and MeTV programming streams currently broadcast on WXOW and WQOW in the La Crosse-Eau Claire, Wisconsin, DMA; (5) the MeTV programming stream currently broadcast on WKOW in the Madison, Wisconsin, DMA; (6) satellite station WYOW, Eagle River, Wisconsin; (7) all real and tangible personal property owned by Quincy located at 501 and 513 Hampshire Street in Quincy, Illinois 62301; (8) all tangible personal property owned by Quincy located at 130 South 5th Street, Quincy, Illinois 62301; and (9) all real and tangible personal property owned by Quincy at the Digital Realty Data Center located at 350 East Cermak, Chicago, Illinois 60616.

The excluded CW and MeTV programming streams currently are derived from separate network affiliations and are broadcast from digital subchannels of the Divestiture Stations. As a result, the Defendants' retention of those CW and MeTV programming streams will not prevent the divestiture buyer from operating the Divestiture Stations as viable, independent competitors. Nor will Defendants' retention of these assets substantially lessen competition. Divesting one of the Defendants' Big Four affiliates in each Overlap DMA will ensure that competition in the licensing of Big Four television retransmission consent is not diminished. Also, nearly all of the merger-induced increase in concentration in the sale of broadcast television spot advertising in each Overlap DMA is avoided by the sale of one of Defendants' Big Four affiliates in each Overlap DMA, as the broadcast television spot advertising revenues attributable to non-Big Four affiliates (*e.g.,* CW and MeTV) is very small, relative to that of the Big Four affiliates.

(C) General Conditions

The proposed Final Judgment contains provisions intended to facilitate the acquirer's efforts to hire certain employees. Specifically, Paragraph IV(J) of the proposed Final Judgment requires Defendants to provide the acquirer and the United States with organization charts and information relating to these employees and to make them available for interviews. It also provides that Defendants must not interfere with any negotiations by the acquirer to hire these employees. In addition, for employees who elect employment with the acquirer, Defendants must waive all non-compete and non-disclosure agreements, vest all unvested pension and other equity rights, provide any pay pro-rata, provide all compensation and benefits that those employees have fully or partially accrued, and provide all other benefits that the employees would generally be provided had those employees continued employment with Defendants, including but not limited to any retention bonuses or payments. This paragraph further provides that Defendants may not solicit to hire any of those employees who were hired by the acquirer, unless an employee is terminated or laid off by the acquirer or the acquirer agrees in writing that Defendants may solicit to hire that individual. The non-solicitation period runs for sixty (60) days from the date of the divestiture.

Paragraph IV(L) of the proposed Final Judgment will facilitate the transfer to the acquirer of customers and other contractual relationships that are included within the Divestiture Assets. Defendants must transfer all contracts, agreements, and relationships to the acquirer and must make best efforts to assign, subcontract, or otherwise transfer contracts or agreements that require the consent of another party before assignment, subcontracting, or other transfer.

The proposed Final Judgment requires Defendants to provide certain transition services to maintain the viability and competitiveness of the Divestiture Stations during the transition to the acquirer. Paragraph IV(N) of the proposed Final Judgment requires Defendants, at the acquirer's option, to enter into a transition services agreement for back office, human resources, accounting, and information technology services for a period of up to six (6) months. The acquirer may terminate the transition services agreement, or any portion of it, without cost or penalty at any time upon commercially reasonable notice. The paragraph further provides that the United States, in its sole discretion, may approve one or more extensions of this transition services agreement for a total of up to an additional six (6) months and that any amendments to or modifications of any provisions of a transition services agreement are subject to approval by the United States in its sole discretion. Paragraph IV(N) also provides that employees of Defendants tasked with supporting this agreement must not share any competitively sensitive information of the acquirer with any other employee of Defendants, unless such sharing is for the sole purpose of providing transition services to the acquirer.

(D) Appointment of Divestiture Trustee

If Defendants do not accomplish the divestiture within the period prescribed in Paragraph IV(A) of the proposed Final Judgment, Section V of the proposed Final Judgment provides that the Court will appoint a divestiture trustee selected by the United States to effect the divestiture. If a divestiture trustee is appointed, the proposed Final Judgment provides that Defendants must pay all costs and expenses of the trustee. The divestiture trustee's commission must be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After the divestiture trustee's appointment becomes effective, the trustee must provide monthly reports to the United States setting forth his or her efforts to accomplish the divestiture. If the divestiture has not been accomplished within six months of the divestiture trustee's appointment, the divestiture trustee and the United States may make recommendations to the Court, which will enter such orders as appropriate, in order to carry out the purpose of the proposed Final Judgment, including by extending the trust or the term of the divestiture trustee's appointment.

(E) Notification Requirements

Section XI of the proposed Final Judgment requires Defendants to notify the United States in advance of acquiring, directly or indirectly, in a transaction that would not otherwise be reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the ''HSR Act''), any Big Four affiliation agreement in a DMA in which a Defendant already has a Big Four affiliation agreement in place. Pursuant to the proposed Final Judgment, Defendants must notify the United States of such acquisitions as it would for a required HSR Act filing, as specified in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations. The proposed Final Judgment further provides for waiting periods and opportunities for the United States to obtain additional information analogous to the provisions of the HSR Act before such acquisitions can be consummated. Requiring notification before the acquisition of Big Four affiliation agreement in a DMA in which

a Defendant already has a Big Four affiliation agreement in place will permit the United States to assess the competitive effects of that acquisition before it is consummated and, if necessary, seek to enjoin the transaction.

(F) Prohibitions on Reacquisition and Limitations on Collaborations

To ensure that the Divestiture Stations are operated independently from Defendants after the divestitures, Paragraph XII(A) of the proposed Final Judgment provides that during the term of the Final Judgment Defendants shall not (1) reacquire any part of the Divestiture Assets; (2) acquire any option to reacquire any part of the Divestiture Assets or to assign them to any other person; (3) enter into any carriage agreement, local marketing agreement, joint sales agreement, other cooperative selling arrangement, or shared services agreement (except as provided in in Section XII), or conduct other business negotiations jointly with any acquirer of any of the Divestiture Assets with respect to those Divestiture Assets; or (4) provide financing or guarantees of financing with respect to the Divestiture Assets.

Under Paragraph XII(B)(1) of the proposed Final Judgment, the shared services prohibition does not preclude Defendants from continuing or entering into agreements in a form customarily used in the industry to (a) share news helicopters or (b) pool generic video footage that does not include recording a reporter or other on-air talent, and does not preclude Defendants from entering into any non-sales-related shared services agreement or transition services agreement that is approved in advance by the United States in its sole discretion. Additionally, Paragraph XII(B)(2) provides that the restrictions of Paragraph XII(A) do not prevent Defendants from entering into agreements to provide news programming to the Divestiture Stations, provided that Defendants do not sell, price, market, hold out for sale, or profit from the sale of advertising associated with the news programming provided by Defendants under such agreements except by approval of the United States in its sole discretion.

The proposed Final Judgment makes one exception to the general prohibition against carriage agreements between the Defendants and the acquirer in the Rockford, Illinois, DMA. Paragraph XII(B)(3) of the proposed Final Judgment provides that Defendants and acquirer may rebroadcast WIFR–LD's CBS program stream on a digital subchannel of WREX, provided that the acquirer rebroadcasts the WIFR–LD program stream on a pass-through basis and coextensively with its main WREX signal, and that Defendants and the acquirer continue to operate WIFR–LD and WREX as separate commercial broadcast television stations. Currently, WIFR–LD's CBS program stream is broadcast on a low power signal. Rebroadcasting the program stream on a WREX digital subchannel would put the program stream on a full power signal, thereby allowing more viewers in the Rockford, Illinois, DMA to access WIFR–LD's CBS programming on an over-the-air basis. Rebroadcasting WIFR–LD's CBS program stream in this way will not prevent the acquirer from operating WREX as a viable, independent competitor, nor will it substantially lessen competition in the Rockford, Illinois, DMA.

(G) Enforcement and Expiration of the Final Judgment

The proposed Final Judgment also contains provisions designed to promote compliance and will make enforcement of the Final Judgment as effective as possible. Paragraph XIV(A) provides that the United States retains and reserves all rights to enforce the Final Judgment, including the right to seek an order of contempt from the Court. Under the terms of this paragraph, Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Defendants have waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance with the Final Judgment with the standard of proof that applies to the underlying offense that the Final Judgment addresses.

Paragraph XIV(B) provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgment. The proposed Final Judgment is intended to remedy the loss of competition the United States alleges would otherwise be harmed by the transaction. Defendants agree that they will abide by the proposed Final Judgment, and that they may be held in contempt of the Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, as interpreted in light of this procompetitive purpose.

Paragraph XIV(C) of the proposed Final Judgment provides that if the Court finds in an enforcement proceeding that a Defendant has violated the Final Judgment, the United States may apply to the Court for a one-time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, to compensate American taxpayers for any costs associated with investigating and enforcing violations of the Final Judgment, Paragraph XIV(C) provides that, in any successful effort by the United States to enforce the Final Judgment against a Defendant, whether litigated or resolved before litigation, the Defendant must reimburse the United States for attorneys' fees, experts' fees, and other costs incurred in connection with any effort to enforce the Final Judgment, including the investigation of the potential violation.

Finally, Section XV of the proposed Final Judgment provides that the Final Judgment will expire ten years from the date of its entry, except that after five years from the date of its entry, the Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestiture has been completed and that continuation of the Final Judgment is no longer necessary or in the public interest.

XII. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment neither impairs nor assists the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

XIII. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment.

Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of the Final Judgment. The comments and the response of the United States will be filed with the Court. In addition, the comments and the United States' responses will be published in the **Federal Register** unless the Court agrees that the United States may instead publish them on the U.S. Department of Justice, Antitrust Division's internet website.

Written comments should be submitted in English to: Scott Scheele, Chief, Media, Entertainment, and Communications Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street NW, Suite 7000, Washington, DC 20530, *ATR.MEC.Information@usdoj.gov.*

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

XIV. Alternatives to the Proposed Final Judgment

As an alternative to the proposed Final Judgment, the United States considered a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Gray's acquisition of Quincy. The United States is satisfied, however, that the relief required by the proposed Final Judgment will remedy the anticompetitive effects alleged in the Complaint, preserving competition for licensing Big Four television retransmission consent and the sale of broadcast television spot advertising in the Overlap DMAs. Thus, the proposed Final Judgment achieves all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits.

XV. Standard of Review Under the APPA for the Proposed Final Judgment

Under the Clayton Act and the APPA, proposed Final Judgments or ''consent decrees'' in antitrust cases brought by the United States are subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *United States* v. *U.S. Airways Grp., Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the ''court's inquiry is limited'' in Tunney Act settlements); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a court's review of a proposed Final Judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable'').

As the U.S. Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the proposed Final Judgment, a court may not ''make de novo determination of facts and issues.'' *United States* v. *W. Elec. Co.,* 993 F.2d 1572, 1577 (D.C. Cir. 1993) (quotation marks omitted); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Instead, ''[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General.'' *W. Elec. Co.,* 993 F.2d at 1577 (quotation marks omitted). ''The court should bear in mind the *flexibility* of the public interest inquiry: the court's function is not to determine whether the resulting array of rights and liabilities is one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest.'' *Microsoft,* 56 F.3d at 1460 (quotation marks omitted); *see also United States* v. *Deutsche Telekom AG,* No. 19 2232 (TJK), 2020 WL 1873555, at *7 (D.D.C. Apr. 14, 2020). More demanding requirements would ''have enormous practical consequences for the government's ability to negotiate future settlements,'' contrary to congressional intent. *Microsoft,* 56 F.3d at 1456. ''The Tunney Act was not intended to create a disincentive to the use of the consent decree.'' *Id.*

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g., Microsoft,* 56 F.3d at 1461 (recognizing courts should give ''due respect to the Justice Department's . . . view of the nature of its case''); *United States* v. *Iron Mountain, Inc.,* 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) (''In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'') (internal citations omitted); *United States* v. *Republic Servs., Inc.,* 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting ''the deferential review to which the government's proposed remedy is accorded''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (''A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case''). The ultimate question is whether ''the remedies [obtained by the

Final Judgment are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.'" *Microsoft,* 56 F.3d at 1461 (*quoting W. Elec. Co.,* 900 F.2d at 309).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''[T]he 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using judgments proposed by the United States in antitrust enforcement, Public Law 108–237 § 221, and added the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). ''A court can make its public interest determination based on the competitive impact statement and response to public comments alone.'' *U.S. Airways,* 38 F. Supp. 3d at 76 (citing *Enova Corp.,* 107 F. Supp. 2d at 17).

XVI. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: July 28, 2021.

Respectfully submitted,

Brendan Sepulveda (D.C. Bar #1025074),
United States Department of Justice, Antitrust Division, 450 Fifth Street NW, Suite 7000, Washington, DC 20530, Telephone: (202) 316–7258, Facsimile: (202) 514–6381, Email: brendan.sepulveda@usdoj.gov.

[FR Doc. 2021–16682 Filed 8–4–21; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–876]

Bulk Manufacturer of Controlled Substances Application: Cambrex High Point, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Cambrex High Point, Inc., has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplemental Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before October 4, 2021. Such persons may also file a written request for a hearing on the application on or before October 4, 2021

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on July 9, 2021, Cambrex High Point, Inc., 4180 Mendenhall Oaks Parkway, High Point, North Carolina 27265–8017, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Oxymorphone	9652	II
Noroxymorphone	9668	II

The company plans to manufacture the above listed controlled substances in bulk for distribution to its customers. No other activities for these drug codes are authorized for this registration.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2021–16690 Filed 8–4–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting and Hearing Notice No. 03–21]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 503.25) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings as follows:

TIME AND DATE: Tuesday, August 17, 2021, at 10:00 a.m.

PLACE: This meeting will be held by teleconference. There will be no physical meeting place.

STATUS: Open. Members of the public who wish to observe the meeting via teleconference should contact Patricia M. Hall, Foreign Claims Settlement Commission, Tele: (202) 616–6975, two business days in advance of the meeting. Individuals will be given call-in information upon notice of attendance to the Commission.

MATTERS TO BE CONSIDERED: 10:00 a.m.—Issuance of Proposed Decisions under the Guam World War II Loyalty Recognition Act, Title XVII, Public Law 114–328.

CONTACT PERSON FOR MORE INFORMATION: Requests for information, advance notices of intention to observe an open meeting, and requests for teleconference dial-in information may be directed to: Patricia M. Hall, Foreign Claims Settlement Commission, 441 G St NW, Room 6234, Washington, DC 20579. Telephone: (202) 616–6975.

Jeremy R. LaFrancois,

Chief Administrative Counsel.

[FR Doc. 2021–16859 Filed 8–3–21; 4:15 pm]

BILLING CODE 4410–BA–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–0102]

Agency Information Collection Activities; Proposed eCollection, eComments Requested; COPS Progress Report

AGENCY: Community Oriented Policing Services, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: The purpose of this notice is to allow for an additional 30 days for public comment September 7, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* COPS Progress Report.

(3) *Agency form number: 1103–0102* U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Law Enforcement Agencies.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:*

There will be approximately 1,424 awardees submitting a COPS Progress Report on a semi-annually basis, or 4,042 responses annually. The average estimated time to complete a progress report is 35 minutes per awardee submission.

(6) *An estimate of the total public burden (in hours) associated with the collection:*

0.4167 hours per respondent × 1424 respondents × 2 (semi-annually response) = 2,848 annual hours.

Total Annual Respondent Burden: 2,848 hours

If additional information is required contact: Melody D. Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Room 3E.405A, Washington, DC 20530.

Dated: August 2, 2021.

Melody D. Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2021–16731 Filed 8–4–21; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Electrical Standards for Construction and for General Industry

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety and Health administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before September 7, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie by telephone at 202–693–0456 or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The information collection requirements specified in the Electrical Standards for Construction and for General Industry are necessary for the prevention of inadvertent electrocution of workers. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 13, 2021 (86 FR 26237).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Electrical Standards for Construction and for General Industry.

OMB Control Number: 1218–0130.

Affected Public: Private Sector: Businesses or other for-profits.

Total Estimated Number of Respondents: 923,147.

Total Estimated Number of Responses: 2,822,871.

Total Estimated Annual Time Burden: 200,045 hours.

Total Estimated Annual Other Costs Burden: $9,186,146.94.

Authority: 44 U.S.C. 3507(a)(1)(D).

Crystal Rennie,

Senior PRA Analyst.

[FR Doc. 2021–16666 Filed 8–4–21; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Meeting of National Council on the Humanities

AGENCY: National Endowment for the Humanities; National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the National Council on the Humanities will meet to review applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965 and make recommendations thereon to the Chairman of the National Endowment for the Humanities (NEH).

DATES: The meeting will be held on Thursday, August 19, 2021, from 10:30 a.m. until 2:00 p.m., and on Friday, August 20, 2021, from 11:00 a.m. until adjourned.

ADDRESSES: The meeting will be held by videoconference originating at Constitution Center, 400 7th Street SW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW, 4th Floor, Washington, DC 20506; (202) 606–8322; *evoyatzis@neh.gov.*

SUPPLEMENTARY INFORMATION: The National Council on the Humanities is meeting pursuant to the National Foundation on the Arts and Humanities Act of 1965 (20 U.S.C. 951–960, as amended).

The National Council will convene in executive session by videoconference on August 19, 2021, from 10:30 a.m. until 10:50 a.m.

The following Committees of the National Council on the Humanities will convene by videoconference on August 19, 2021, from 11:00 a.m. until 2:00 p.m., to discuss specific grant applications and programs for The American Rescue Plan (ARP) Act funding before the Council:

ARP Organizations Committee 1 (Office of Digital Humanities);

ARP Organizations Committee 2 (Division of Education Programs);

ARP Organizations Committee 3 (Division of Preservation and Access);

ARP Organizations Committee 4 (Division of Public Programs);

ARP Organizations Committee 5 (Division of Research Programs); and

ARP Grantmaking Programs (Office of Challenge Programs and Division of Research Programs).

The plenary session of the National Council on the Humanities will convene by videoconference on August 20, 2021, at 11:00 a.m. After remarks from the Acting Chairman and Chief of Staff, the Council will hear reports on and consider applications for NEH ARP funding. The agenda for the plenary session will be as follows:

A. Introductions and Remarks
   1. Acting Chairman's Remarks
   2. Chief of Staff's Remarks
B. ARP Organizations Committee 1 (Office of Digital Humanities);
C. ARP Organizations Committee 2 (Division of Education Programs);
D. ARP Organizations Committee 3 (Division of Preservation and Access);
E. ARP Organizations Committee 4 (Division of Public Programs);
F. ARP Organizations Committee 5 (Division of Research Programs); and
G. ARP Grantmaking Programs (Office of Challenge Programs and Division of Research Programs)

This meeting of the National Council on the Humanities will be closed to the public pursuant to sections 552b(c)(4), 552b(c)(6), and 552b(c)(9)(B) of Title 5 U.S.C., as amended, because it will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, and discussion of certain information, the premature disclosure of which could significantly frustrate implementation of proposed agency action. I have made this determination pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings dated April 15, 2016.

Dated: August 2, 2021.

Elizabeth Voyatzis,

Committee Management Officer.

[FR Doc. 2021–16764 Filed 8–4–21; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The review and evaluation may also include assessment of the progress of awarded proposals. These meetings will primarily take place at NSF's headquarters, 2415 Eisenhower Avenue, Alexandria, VA 22314.

These meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meetings will not be announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF website: *https://www.nsf.gov/events/advisory.jsp.* This information may also be requested by telephoning, 703/292–8687.

Dated: August 2, 2021.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2021–16694 Filed 8–4–21; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Membership of National Science Foundation's Senior Executive Service Performance Review Board

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation is announcing the members of the Senior Executive Service Performance Review Board.

ADDRESSES: Comments should be addressed to Branch Chief, Executive Services, Division of Human Resource Management, National Science Foundation, Room W15219, 2415 Eisenhower Avenue, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Munz at the above address or (703) 292–2478.

SUPPLEMENTARY INFORMATION: The membership of the National Science Foundation's Senior Executive Service Performance Review Board is as follows:

Karen Marrongelle, Chief Operating Officer, Chairperson

Wonzie Gardner, Chief Human Capital Officer and Office Head, Office of Information and Resource Management

Janis Coughlin-Piester, Deputy Office Head, Office of Budget, Finance and Award Management

Joanne Tornow, Assistant Director, Directorate for Biological Sciences

Erwin Gianchandani, Senior Advisor, Office of the Director

Michael Wetklow, Deputy Chief Financial Officer and Division Director, Budget Division

Linda Sapochak, Division Director, Division of Materials Research, Directorate for Mathematical & Physical Sciences

William Malyszka, Division Director, Division of Human Resource Management and PRB Executive Secretary

This announcement of the membership of the National Science Foundation's Senior Executive Service Performance Review Board is made in compliance with 5 U.S.C. 4314(c)(4).

Dated: August 2, 2021.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2021–16756 Filed 8–4–21; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Call for Nominations

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Call for nominations.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting nominations for the position of Radiation Safety Officer on the Advisory Committee on the Medical Uses of Isotopes (ACMUI). Nominees should currently be functioning as a Radiation Safety Officer.

DATES: Nominations are due on or before October 4, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Kellee Jamerson, U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards; (301) 415–7408; *Kellee.Jamerson@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Nomination Process: Submit an electronic copy of resume or curriculum vitae, along with a cover letter, to Ms. Kellee Jamerson, *Kellee.Jamerson@nrc.gov.* The cover letter should describe the nominee's current involvement as a Radiation Safety Officer and express the nominee's interest in the position. Please ensure that the resume or curriculum vitae includes the following information, if applicable: Education; certification(s); professional association and committee membership activities; duties and responsibilities in current and previous clinical, research, and/or academic position(s).

ACMUI members possess the medical and technical skills needed to address evolving issues. The current membership is comprised of the following professionals: (a) Nuclear medicine physician; (b) Nuclear cardiologist; (c) two radiation oncologists; (d) diagnostic radiologist; (e) therapy medical physicist; (f) nuclear medicine physicist; (g) nuclear pharmacist; (h) health care administrator; (i) radiation safety officer; (j) patients' rights advocate; (k) Food and Drug Administration representative; and (l) Agreement State representative. For additional information about membership on the ACMUI, visit the ACMUI Membership web page, *http://www.nrc.gov/about-nrc/regulatory/advisory/acmui/membership.html.*

The ACMUI Radiation Safety Officer provides advice to NRC staff on health physics issues associated with medical applications of byproduct material. This advice includes providing input on NRC proposed rules and guidance documents; providing recommendations on the training and experience of radiation safety officers; identification of medical events; evaluating non-routine uses of byproduct material; bringing key issues in the radiation safety officer community to the attention of NRC staff; evaluating the security of byproduct material used in medical and research facilities, and other issues as they relate to radiation safety and NRC medical-use policy. This individual is appointed based on their educational background, certification(s), work experience, involvement and/or leadership in professional society activities, and other information obtained in recommendation letters or during the selection process. Nominees should have the demonstrated ability to establish effective work relationships with peers and implement successful approaches to problem solving and conflict resolution.

The ACMUI advises the NRC on policy and technical issues that arise in the regulation of the medical use of byproduct material. Responsibilities of an ACMUI member include providing comments on changes to the NRC regulations and guidance; evaluating certain non-routine uses of byproduct material; providing technical assistance in licensing, inspection, and enforcement cases; and bringing key issues to the attention of the NRC staff, for appropriate action. Committee members currently serve a four-year term and may be considered for reappointment to an additional term.

Nominees must be U.S. citizens and be able to devote approximately 160 hours per year to ACMUI business. Members are expected to attend semi-annual meetings at NRC headquarters in Rockville, Maryland and to participate in teleconferences or virtual meetings, as needed. Members who are not Federal employees are compensated for their service. In addition, members are reimbursed for travel (including per diem in lieu of subsistence) and are reimbursed secretarial and correspondence expenses. Full-time Federal employees are reimbursed for travel expenses only.

Security Background Check: The selected nominee will undergo a thorough security background check. Security paperwork may take the nominee several weeks to complete. Nominees will also be required to complete a financial disclosure statement to avoid conflicts of interest.

Dated at Rockville, Maryland this 2nd day of August 2021.

For the U.S. Nuclear Regulatory Commission.

Russell E. Chazell,

Federal Advisory Committee Management Officer.

[FR Doc. 2021–16706 Filed 8–4–21; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0235]

Information Collection: Financial Protection Requirements and Indemnity Agreements

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Submission to the Office of Management and Budget; Request for Comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Financial Protection Requirements and Indemnity Agreements.''

DATES: Submit comments by September 7, 2021. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0235 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–2020–0235.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The supporting statement and burden spreadsheet are available in ADAMS under Accession Nos. ML21134A185 and ML21013A488.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov/* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, 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 comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''Financial Protection Requirements and Indemnity Agreements.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on April 1, 2021, 86 FR 17216.

1. *The Title of the Information Collection:* Part 140 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Financial Protection Requirements and Indemnity Agreements.

2. *OMB Approval Number:* 3150–0039.

3. *Type of Submission:* Extension.

4. *The Form Number, If Applicable:* Not applicable.

5. *How Often the Collection Is Required or Requested:* Annually, and on occasion, as needed for applicants and licensees to meet their responsibilities called for in Sections 170 and 193 of the Atomic Energy Act of 1954.

6. *Who Will Be Required or Asked To Respond:* Each applicant for or holder of a license issued under 10 CFR parts 50 or 54, to operate a nuclear reactor, or the applicant for or holder of a combined license issued under 10 CFR parts 52 or 54, as well as licensees authorized to possess and use plutonium in a plutonium processing and fuel fabrication plant. In addition, licensees authorized to construct and operate a uranium enrichment facility in accordance with 10 CFR parts 40 and 70.

7. *The Estimated Number of Annual Responses:* 208.

8. *The Estimated Number of Annual Respondents:* 104.

9. *The Estimated Number of Hours Needed Annually To Comply With the Information Collection Requirement or Request:* The total reporting and recordkeeping burden is 753 (727 hours reporting + 26 hours recordkeeping).

10. *Abstract:* 10 CFR part 140 specifies the information to be submitted by licensees that enables the NRC to assess (a) financial protection required by licensees and for the indemnification and limitation of liability of certain licensees and other persons pursuant to Section 170 of the Atomic Energy Act of 1954, as amended, and (b) the liability insurance required opinion.

Dated: August 2, 2021.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2021–16765 Filed 8–4–21; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92528; File No. SR–CBOE–2020–106]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Withdrawal of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Its Rules Regarding the Minimum Increments for Electronic Bids and Offers and Exercise Prices of Certain FLEX Options and Clarify in the Rules How the System Ranks FLEX Option Bids and Offers for Allocation Purposes

July 30, 2021.

On November 16, 2020, Cboe Exchange, Inc. 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 its rules regarding the minimum increments for electronic bids and offers and exercise prices of certain FLEX options and clarify how the system ranks FLEX option bids and offers for allocation purposes. On November 30, 2020, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. The Commission published notice of the proposed rule change, as modified by Amendment No. 1, in the **Federal Register** on December 4, 2020.[3] On January 14, 2021, pursuant to Section 19(b)(2) of the Exchange Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On March 4, 2021, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act [6] to determine whether to approve or disapprove the proposed rule change.[7] On May 27, 2021, the Commission designated a longer period for Commission action on proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[8] On July 8, 2021, the Exchange withdrew the proposed rule change (SR–CBOE–2020–106).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–16672 Filed 8–4–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92536; File No. SR–NYSEARCA–2021–66]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Reformat the Basic Rates Section of the NYSE Arca Equities Fees and Charges

July 30, 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 July 20, 2021, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reformat the Basic rates section of the NYSE Arca Equities Fees and Charges (''Fee Schedule'') applicable to securities priced at or above $1.00 and the rates applicable to securities priced below $1.00 without making any substantive changes to the current fees and credits for each group of securities. The Exchange proposes to implement the fee changes effective July 20, 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 Exchange proposes to reformat the Basic rates section of the Fee Schedule applicable to securities priced at or above $1.00 and the rates applicable to securities priced below $1.00 without making any substantive changes to the current fees and credits for each group of securities. The Exchange proposes to implement the fee changes effective July 20, 2021.

The Exchange proposes the following non-substantive changes to reorganize the presentation of the Fee Schedule in order to enhance its clarity and transparency, thereby making the Fee Schedule easier to navigate.

In connection with the proposed rule change, the Exchange would add new section I titled ''Definitions'' that would adopt several definitions that would apply only for purposes of the fees and credits on the Fee Schedule. As proposed, section I would set forth the following twelve definitions applicable to Exchange Transactions:

• ''*ADV*'' would mean average daily volume.

• ''*Adding Liquidity*'' would mean the execution of an order on the Exchange that provided liquidity.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 90536 (November 30, 2020), 85 FR 78381.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 90926, 86 FR 6710 (January 22, 2021).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 91257, 86 FR 13769 (March 10, 2021). The Commission received one comment letter, which was from the Exchange, in response to the order instituting proceedings. The comment letter is available at the Commission's website at: *https://www.sec.gov/comments/sr-cboe-2020-106/srcboe2020106-8744076-237183.pdf.*

[8] *See* Securities Exchange Act Release No. 92040, 85 FR 29817 (June 3, 2021).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange originally filed to amend the Fee Schedule on July 1, 2021 (SR–NYSEArca–2021–59). SR–NYSEArca–2021–59 was subsequently withdrawn and replaced by SR–NYSEArca–2021–62. SR–NYSEArca–2021–62 was subsequently withdrawn and replaced by this filing.

• ''*Auction*'' would mean Early Open Auction, Core Open Auction, Trading Halt Auction and Closing Auction on NYSE Arca.

• ''*Auction Orders*'' would mean Market Orders, Market-On-Close Orders, Limit-On-Close Orders and Auction-Only Orders executed in a NYSE Arca auction.

• ''*Cboe BZX Auction*'' would mean orders routed for execution in the open or closing auction on Cboe BZX.

• ''*Closing Orders*'' would mean Market, Market-On-Close, Limit-On-Close, and Auction-Only Orders executed in a Closing Auction.

• ''*Nasdaq Auction*'' would mean orders routed for execution in the open or closing auction on Nasdaq.

• ''*NYSE American Auction*'' would mean orders routed for execution in the open or closing auction on NYSE American.

• ''*NYSE Auction*'' would mean orders routed for execution in the open or closing auction on NYSE.

• ''*Opening Orders*'' would mean Market and Auction-Only Orders executed in an Early Open Auction, Core Open Auction or Trading Halt Auction.

• ''*Removing Liquidity*'' would mean the execution of an order that removed liquidity.

• ''*US CADV*'' would mean the United States consolidated average daily volume of transactions reported to a securities information processor (''SIP''). Transactions that are not reported to a SIP are not included in the US CADV.[5]

The Exchange proposes these definitions to use consistent terms throughout the Fee Schedule relating to Exchange Transactions. Specifically, the Exchange proposes to use the term ''Adding Liquidity'' when referring to an order that when executed, provides liquidity, and to use the term ''Removing Liquidity'' when referring to an order that when executed, takes liquidity. By consolidating definitions used in this part of the Fee Schedule, the Exchange would eliminate the need to separately define these terms within the tables of the Fee Schedule or in footnotes. Additionally, with the proposed adoption of the terms ADV and US CADV in proposed Section I of the Fee Schedule, the Exchange proposes to delete references to current footnotes 3 and 4 throughout the Fee Schedule, where footnote 3 of the Fee Schedule currently defines the term US CADV and footnote 4 of the Fee Schedule currently defines the term ADV. The Exchange further proposes to amend current footnote 1 to delete an internal reference to footnote 3 and delete the words ''average daily volume'' as the definition for ADV now appears in proposed Section I titled Definitions. The Exchange also proposes to renumber footnotes through the Fee Schedule in conjunction to the changes discussed herein.[6]

Next, the Exchange proposes to add new section II titled ''General'' that would set forth general information regarding the way the Exchange has always interpreted and applied fees and credits to Exchange Transactions. As proposed, this section would contain the following general information applicable to Exchange Transactions:

• Rebates indicated by parentheses ( ).

• All fees and credits and tier requirements apply to ETP Holders and Market Makers.

• All fees and credits are per share unless noted otherwise.

Next, the Exchange proposes a non-substantive change to the presentation of the Basic rates applicable to securities priced at or above $1.00 and the rates applicable to securities priced below $1.00.[7] The Exchange proposes a table presentation. The proposed changes would appear in the Fee Schedule in two tables, one that would appear under proposed new section III titled ''Standard Rates—Transactions'' and a second table that would appear under proposed new section V titled ''Standard Rates—Routing.'' [8] The Exchange also proposes to simplify the presentation in each table by using sub-titles to identify the type of activity (*i.e.,* Adding Liquidity, Adding Liquidity—Retail Orders, Adding Liquidity—MPL Orders, Removing Liquidity, Opening Orders and Closing Orders in the table titled ''Standard Rates—Transactions'') and then listing the corresponding rates under each category. The proposed changes would appear as follows in the Fee Schedule:

STANDARD RATES—TRANSACTIONS

[Applicable when Tier Rates do not apply]

Category	Adding liquidity [(a)(b)]	Adding liquidity—retail orders [(c)]	Adding liquidity—MPL orders	Removing liquidity [(d)]	Opening orders [(e)(g)]	Closing orders [(f)(g)]
Securities priced at or above $1.00.	($0.0020)	($0.0032)	($0.0010)	$0.0030	$0.0015; $0.0005 for Retail Orders.	$0.0012; $0.0008 for Retail Orders.
Securities priced below $1.00.	($0.00004)	($0.00004)	($0.00004)	0.295% of Dollar Value	0.1% of Dollar Value	0.1% of Dollar Value.

[5] The proposed definition differs from the definition in current footnote 3, which is marked for deletion under this proposed rule change. The current definition includes a reference to odd lots that is no longer applicable. The current definition also includes references to exclusion of volume on days when the market closes early and the date of the annual reconstitution of the Russell Investments Indexes. The references to exclusion of volume appear in current footnote 1 and would therefore continue to apply to Exchange Transactions.

[6] In connection with the proposed renumbering of footnotes, the Exchange also proposes to delete current footnote 6 in its entirety because the Exchange previously removed the term ''Allied Person'' from its rules. *See* Securities Exchange Act Release No. 84857 (December 19, 2018), 83 FR 66824 (December 27, 2018) (SR–NYSEArca–2018–97).

[7] In connection with this change, the Exchange proposes to amend the description of Rounds Lots and Odd Lots under Exchange Transactions to include both securities with a Per Share Price $1.00 or Above and securities with a Per Share Price Below $1.00. This proposed change would provide consistency between the description and the table presentation which includes rates for both groups of securities.

[8] With this proposed rule change, the Exchange also proposes to use the term ''Standard'' rates rather than ''Basic'' rates.

STANDARD RATES—ROUTING

Category	Orders routed that remove liquidity	Primary until 9:45 orders and primary after 3:55 orders designated as retail orders and routed to the primary market	Primary only ("PO") orders in tape A securities routed to NYSE that add liquidity	PO orders in tape B securities routed to NYSE American that add liquidity	PO orders in tape A securities routed to NYSE auction	PO orders in tape B securities routed to NYSE American auction	PO orders in tape B securities routed to Cboe BZX auction	PO orders in tape C securities routed to NASDAQ auction
Securities priced at or above $1.00.	$0.0035	$0.0010	($0.0012)	No Credit	$0.0010	$0.0005	$0.0030	$0.0030
Securities priced below $1.00.	0.3% of Dollar Value [(a)].	n/a	n/a	n/a	n/a	n/a	n/a	n/a

The Exchange notes that each of the rates that currently appear in the Basic rates section of the Fee Schedule, with one exception discussed below, and in the section of the Fee Schedule applicable to securities priced below $1.00 have been relocated in the tables proposed above and in proposed footnotes (a) through (g) for the table under proposed section III titled ''Standard Rates—Transactions'' and in proposed footnote (a) for the table under proposed section V titled ''Standard Rates—Routing.'' The Exchange proposes to relocate certain of these rates in footnotes because these rates do not have a logical place in the proposed tables. The proposed footnotes under proposed section III titled ''Standard Rates—Transactions'' would be as follows:

(a) For securities priced at or above $1.00, an additional credit in Tape B Securities shall apply to LMMs and to Market Makers affiliated with LMMs that provide displayed liquidity based on the number of Less Active ETP Securities in which the LMM is registered as the LMM. The applicable tiered-credits are noted below (See LMM Transaction Fees and Credits).

(b) In securities priced below $1.00, this credit applies to all orders that provide liquidity.

(c) Retail Order means an order as defined in Rule 7.44–E(a)(3).

(d) In securities priced at or above $1.00, this fee also applies to Non-Displayed Limit Orders that remove liquidity.

(e) In securities priced at or above $1.00, this fee is capped at $20,000 per month per Equity Trading Permit ID.

(f) Fee applies to orders in Tape A Securities, Tape C Securities, and NYSE Arca primary listed securities (includes all ETFs/ETNs).

(g) In securities priced at or above $1.00, this fee applies to executions resulting from Auction Orders. In securities priced below $1.00, this fee applies to all orders executed in the Early Open Auction, Core Open Auction, Trading Halt Auction or Closing Auction.

Additionally, the proposed footnote under proposed section V titled ''Standard Rates—Routing'' would be as follows:

(a) Applicable to orders of listed and Nasdaq securities routed away and executed by another market center or participant.

As noted above, each of the rates that currently appear in the Basic rates section of the Fee Schedule have been relocated in the proposed new table format. With respect to MPL orders, the Exchange proposes to relocate the base credit of $0.0010 per share for MPL orders that provide liquidity [9] to the table titled ''Standard Rates—Transactions'' and relocate the remaining two tiers of MPL order credits to the Tier Rates section of the Fee Schedule. The Exchange believes the proposed new location for these credits is a logical place as they would appear along with tiered pricing related to MPL Orders, *i.e.,* MPL Orders Step Up Tier 1 and MPL Orders Step Up Tier 2.

Further, the Exchange proposes to relocate and display certain rates in bullet form because these rates do not have a logical place in the proposed tables. Accordingly, the Exchange proposes new section IV titled ''Other Standard Rates for Securities with a Per Share Price $1.00 or Above'' that would provide these additional rates, as follows:

- No fee or credit for Non-Displayed Limit Orders that add liquidity.
- $0.0030 fee for MPL Orders removing liquidity; $0.0010 if such orders are designated as Retail Orders.
- $0.0006 fee for executions in an Auction other than for executions from Auction Orders.

Next, the Exchange proposes to adopt the heading ''Tier Rates—Round Lots and Odd Lots (Per Share Price $1.00 or Above)'' under proposed new section VI that would appear at the end of the proposed new section V titled ''Standard Rates—Routing'' to distinguish Standard Rates from Tier Rates, which begin on the Fee Schedule with Tier 1.

Finally, with the proposed relocation of the rates applicable to securities priced below $1.00 from their current location on the Fee Schedule to the proposed table presentation, the Exchange proposes to adopt the heading ''Tier Rates—Round Lots and Odd Lots (Per Share Price below $1.00)'' under proposed new section VII and keep the Sub-Dollar Adding Step Up Tier where it currently appears and that pricing tier would be the only pricing tier under this section.

As noted above, the Exchange is not proposing any substantive change to any current fee or credit. The purpose of the proposed rule change is to make a non-substantive change to reorganize the presentation of the Fee Schedule in order to enhance its clarity and transparency, thereby making the Fee Schedule easier to navigate.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[10] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[11] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is

[9] The base credit of $0.0010 per share applies for MPL orders providing liquidity when MPL Adding ADV during the billing month is less than 1.5 million shares.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

consistent with the Section 6(b)(5) [12] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed changes are reasonable and equitable because they are clarifying, and non-substantive and the Exchange is not changing any current fees or credits that apply to trading activity on the Exchange or to routed executions. Further, the changes are designed to make the Fee Schedule easier to read and make it more user-friendly to better display the allocation of fees and credits among Exchange members. The Exchange believes that this proposed format will provide additional transparency of Exchange fees and credits. The Exchange also believes that the proposal is non-discriminatory because it applies uniformly to all ETP Holders, and again, the Exchange is not making any changes to existing fees and credits. Finally, the Exchange believes that the reformatted Fee Schedule, as proposed herein, will be clearer and less confusing for investors and will eliminate potential investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

The Exchange believes that the proposed reformatted the Fee Schedule is equitable and not unfairly discriminatory because the resulting streamlined Fee Schedule would continue to apply to ETP Holders as it does currently because the Exchange is not adopting any new fees or credits or removing any current fees or credits from the Fee Schedule that impact ETP Holders. All ETP Holders would continue to be subject to the same fees and credits that currently apply to them.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[13] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition. The Exchange's proposal to reformat its Fee Schedule will not place any undue burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because all ETP Holders would continue to be subject to the same fees and credits that currently apply to them. The Exchange notes that the proposal does not change the amount of any current fees or rebates, but rather makes clarifying and formatting changes, and therefore does not raise any competitive issues. To the extent the proposed rule change places a burden on competition, any such burden would be outweighed by the fact that a streamlined Fee Schedule would promote clarity and reduce confusion with respect to the fees and credits that ETP Holders would be subject to.

Intermarket Competition. The Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable. Market share statistics provide ample evidence that price competition between exchanges is fierce, with liquidity and market share moving freely from one execution venue to another in reaction to pricing changes.

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 19(b)(3)(A) [14] of the Act and subparagraph (f)(2) of Rule 19b–4 [15] 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) [16] 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–2021–66 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–2021–66. 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–NYSEARCA–2021–66 and

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(8).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(2).

[16] 15 U.S.C. 78s(b)(2)(B).

should be submitted on or before August 26, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–16678 Filed 8–4–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92532; File Nos. SR–NYSE–2021–05, SR–NYSENAT–2021–01, SR–NYSEAMER–2021–04, SR–NYSECHX–2021–01]

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE National, Inc.; NYSE American LLC; NYSE Chicago, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Each of the Exchange's Co-Location Services and Fee Schedule To Add Two Partial Cabinet Solution Bundles

July 30, 2021.

On January 19, 2021, New York Stock Exchange LLC, NYSE National, Inc., NYSE American LLC, and NYSE Chicago, Inc. each filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the each of the Exchanges' co-location rules to add two partial cabinet solution bundles.[3] The proposed rule changes were published for comment in the **Federal Register** on February 5, 2021.[4] On March 18, 2021, the Commission extended the time period within which to approve each of the proposed rule changes, disapprove the proposed rule changes, or institute proceedings to determine whether to approve or disapprove the proposed rule changes, to May 6, 2021.[5] On May 6, 2021, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[6] The Commission received a comment letter on the proposal from the Exchanges.[7]

Section 19(b)(2) of the Act[8] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule changes were published for comment in the **Federal Register** on February 5, 2021.[9] The 180th day after publication of the Notices is August 4, 2021. The Commission is extending the time period for approving or disapproving the proposal for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule changes along with the comment received. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[10] designates October 3, 2021 as the date by which the Commission should either approve or disapprove the proposed rule change (File Nos. SR–NYSE–2021–05, SR–NYSENAT–2021–01, SR–NYSEAMER–2021–04, NYSECHX–2021–01).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier.

Assistant Secretary.

[FR Doc. 2021–16675 Filed 8–4–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92533; File No. SR–NASDAQ–2021–059]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 4 Listing Rules

July 30, 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 July 20, 2021, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend The Nasdaq Options Market LLC (''NOM'') Rules at Options 2, Section 5, Market Maker Quotations; Options 4, Options Listing Rules; and Options 4A, Section 12, Terms of Index Options Contracts. This proposal also creates a new Options 4C entitled ''U.S. Dollar-Settled Foreign Currency Options.'' Finally, the Exchange proposes to reserve some sections with the Equity Rules and correct a cross-reference within Options 2, Section 4, Obligations of Market Makers.

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[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The New York Stock Exchange LLC, NYSE National, Inc., NYSE Arca, Inc., NYSE American LLC, and NYSE Chicago, Inc. are collectively referred to herein as ''NYSE'' or the ''Exchanges.''

[4] *See* Securities Exchange Act Release No. 91034 (February 1, 2021), 86 FR 8443 (SR–NYSE–2021–05); 91037 (February 1, 2021), 86 FR 8424 (SR–NYSENAT–2021–01); 91035 (February 1, 2021), 86 FR 8449 (SR–NYSEAMER–2021–04); 91036 (February 1, 2021), 86 FR 8440 (SR–NYSECHX–2021–01).

[5] *See* Securities Exchange Act Release Nos. 91357, 86 FR 15732 (March 24, 2021) (SR–NYSE–2021–05); 91363, 86 FR 15763 (March 24, 2021) (SR–NYSENAT–2021–01); 91358, 86 FR 15732 (March 24, 2021) (SR–NYSEAMER–2021–04); 91362, 86 FR 15765 (March 24, 2021) (SR–NYSECHX–2021–01).

[6] *See* Securities Exchange Act Release No. 91785 (May 6, 2021), 86 FR 26082 (May 12, 2021) (SR–NYSE–2021–05, SR–NYSENAT–2021–01, SR–NYSEArca–2021–07, SR–NYSEAMER–2021–04, NYSECHX–2021–01).

[7] *See,* respectively, letter dated July 6, 2021 from Elizabeth K. King, Chief Regulatory Officer, ICE, General Counsel and Corporate Secretary, NYSE to Vanessa Countryman, Secretary, Commission. All comments received by the Commission on the proposed rule change are available on the Commission's website at: *https://www.sec.gov/comments/sr-nyse-2021-05/srnyse202105.htm.* NYSE filed comment letters on behalf of all of the Exchanges.

[8] 15 U.S.C. 78s(b)(2).

[9] *See supra* note 4.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Exchange proposes to amend the Options 4, Options Listing Rules, to conform NOM's Options 4 Listing Rules to Nasdaq ISE, LLC's (''ISE'') Options 4 Listing Rules. The Exchange also proposes to amend NOM Options 4A, Section 12, Terms of Index Options Contracts and create a new NOM Options 4C entitled ''U.S. Dollar-Settled Foreign Currency Options'' and adopt U.S. Dollar-Settled Foreign Currency Options rules similar to Nasdaq Phlx LLC's (''Phlx'') rules at Options 4C. Also, the Exchange also proposes to amend Options 2, Section 5, Market Maker Quotations to relocate rule text concerning bid/ask differentials for long-term options contracts from NOM Options 4 and Options 4A, similar to ISE. Finally, the Exchange proposes to correct a cross-reference within Options 2, Section 4, Obligations of Market Makers. Each rule change is described below.

Options 4, Options Listing Rules

Conforming NOM's Options 4 Listing Rules to that of ISE Options 4 is part of the Exchange's continued effort to promote efficiency in the manner in which it administers its rules. The Exchange proposes to amend these rules to conform to ISE Options 4 Rules.

The Exchange proposes a universal technical amendment which impacts Options 4, Sections 1 through 4, 6, 7, 8 and 10. The Exchange proposes to relocate a ''.'' at the end of the terms ''Section,'' where applicable, throughout Options 4 to the end of the proceeding number within Options 4, Sections 1 through 4, 6, 7, 8 and 10.

Section 1. Designation of Securities

The Exchange proposes to replace the current rule text of Options 4, Section 1 which states,

Securities traded on the Exchange are options contracts, each of which is designated by reference to the issuer of the underlying security or name of underlying foreign currency, expiration month or expiration date, exercise price and type (put or call).

with the following rule text,

The Exchange trades options contracts, each of which is designated by reference to the issuer of the underlying security, expiration month or expiration date, exercise price and type (put or call).

The Exchange proposes to amend this sentence within Options 4, Section 1 to conform to ISE Options 4, Section 1. The revised wording does not substantively amend the paragraph.

Section 2. Rights and Obligations of Holders and Writers

The Exchange proposes to replace the current rule text of Options 4, Section 1 which states,

Subject to the provisions of this Chapter, the rights and obligations of holders and writers of option contracts of any class of options dealt in on the Exchange shall be as set forth in the Rules of the Clearing Corporation.

with the following rule text,

The rights and obligations of holders and writers shall be as set forth in the Rules of the Clearing Corporation.

The Exchange proposes to amend this sentence within Options 4, Section 2 to conform to ISE Options 4, Section 1. The revised wording does not substantively amend the paragraph.

Section 3. Criteria for Underlying Securities

Options 4, Section 3 of the Options Listing Rules is being updated to conform to ISE Options 4, Section 3.

The Exchange proposes to amend Options 4, Section 3(a)(i) and (ii) to conform to ISE Options 4, Section 3(a)(1) and (2) by changing the ''i. and ii.'' to ''(1) and (2),'' respectively. Also, the Exchange proposes to remove the phrase ''with the SEC'' within current NOM Options 4, Section 3(a)(i). These amendments are non-substantive.

The Exchange proposes to amend Options 4, Section 3(b) to reword the rule text to ISE Options 4, Section 3(b). The Exchange proposes to replace the current rule text of Options 4, Section 3(b) which states,

In addition, the Exchange shall from time to time establish standards to be considered in evaluating potential underlying securities for the Exchange options transactions. There are many relevant factors which must be considered in arriving at such a determination, and the fact that a particular security may meet the standards established by the Exchange does not necessarily mean that it will be selected as an underlying security. The Exchange may give consideration to maintaining diversity among various industries and issuers in selecting underlying securities. Notwithstanding the foregoing, an underlying security will not be selected unless:

with the following rule text,

In addition, the Exchange shall from time to time establish guidelines to be considered in evaluating potential underlying securities for Exchange options transactions. There are many relevant factors which must be considered in arriving at such a determination, and the fact that a particular security may meet the guidelines established by the Exchange does not necessarily mean that it will be selected as an underlying security. Further, in exceptional circumstances an underlying security may be selected by the Exchange even though it does not meet all of the guidelines. The Exchange may also give consideration to maintaining diversity among various industries and issuers in selecting underlying securities. Notwithstanding the foregoing, however absent exceptional circumstances, an underlying security will not be selected unless:

The new rule text permits the Exchange, in exceptional circumstances, to select an underlying security even though it does not meet all of the guidelines. Today, the Exchange may establish guidelines to be considered in evaluating potential underlying securities for Exchange options transactions. Providing NOM with the same ability to select an underlying security even though it does not meet all of the guidelines as ISE will permit NOM to list similar options as ISE for competitive purposes. The proposal to replace the term ''standards'' with ''guidelines'' within paragraph 3(b) is non-substantive.

The Exchange is amending numbering within Options 4, Section 3(b) as well as removing extraneous rule text within current Options 4, Section 3(b)(iii), namely ''or Rules thereunder.'' The Exchange proposes to relocate Options 4, Section 3(k) into new Options 4, Section 3(b)(6) without change. This would align NOM Options 4, Section 3(b)(6) with ISE Options 4, Section 3(b)(6). This provision states,

Notwithstanding the requirements set forth in Paragraphs 1, 2, 4 and 5 above, the Exchange may list and trade an options contract if (i) the underlying security meets the guidelines for continued approval in Options 4, Section 4; and (ii) options on such underlying security are traded on at least one other registered national securities exchange.

The Exchange proposes to renumber NOM Options 4, Section 3(c) and make minor amendments to rule text within current Options 4, Section 3(c)(ii), (iii), (iv) and (v), Sections 3(d), 3(f) and 3(g) to conform the rule text to ISE Options 4, Section 3(c)(ii), (iii), (iv) and (v), Sections 3(d), 3(f) and 3(g). The proposed changes are non-substantive.[3]

The Exchange proposes to amend an ''up'' to ''on'' within NOM Options 4, Section 3(d). This proposed change is non-substantive.

The Exchange proposes non-substantive amendments to amend NOM Options 4, Section 3(f) and (g)[4] in addition to conforming the numbering to ISE Options 4, Section 3(f) and (g) numbering.

The Exchange proposes to relocate rule text currently within NOM Options 4, Section 3(h), which describes a market information sharing agreement, to proposed NOM Options 4, Section 3(i) without change. This rule text is currently located within ISE rules at Options 4, Section 3(i).

Current NOM Options 4, Section 3(i) is being re-lettered as proposed Options 4, Section 3(h). The Exchange proposes to add the defined term ''Financial Instruments'' within Options 4, Section 3(h) and also account for money market instruments, U.S. government securities and repurchase agreements, defined by the term ''Money Market Instruments'' similar to ISE Options 4, Section 3(h). The addition of money market instruments, U.S. government securities and repurchase agreements as securities deemed appropriate for options trading will make clear that these agreements are included in the acceptable securities. The Exchange notes that this rule text is clarifying in nature and will more explicitly provide for money market instruments, U.S. government securities and repurchase agreements as a separate category from what is being defined as ''Financial Instruments'' with this proposal. Today, these instruments are eligible as securities deemed appropriate for options trading. The remainder of the changes are non-substantive in nature and simply conform the location of words similar to ISE.[5] The Exchange also proposes to remove the following products from Options 4, Section 3(h): The ETFS Silver Trust, the ETFS Palladium Trust, the ETFS Platinum Trust or the Sprott Physical Gold Trust. The Exchange no longer lists these products and proposes to remove them the products from its listing rules. The Exchange will file a proposal with the Commission if it determines to list these products in the future. Finally, the Exchange proposes to amend Options 4, Section 3(h) by removing the rule text at the end of the paragraph which provides, ''all of the following conditions are met.'' Paragraph (h) would simply end with ''provided that:'' and direct market participants to subparagraphs (1) and (2).

The Exchange proposes to capitalize ''the'' at the beginning of Options 4, Section 3(h)(1) and remove ''; and'' at the end of the paragraph and instead at a period so that subparagraphs (1) and (2) are not linked, but rather read independently. Today, Options 4, Section 3(h)(1) applies to all Exchange-Traded Fund Shares. Similar to ISE Options 4, Section 3(h)(2), the Exchange proposes to clarify that Options 4, Section 3(h)(2) applies to only international or global Exchange-Traded Fund Shares. Specifically, the Exchange proposes to amend Options 4, Section 3(h)(2) to provide, ''Exchange-Traded Fund Shares based on international or global indexes, or portfolios that include non-U.S. securities, shall meet the following criteria.'' ISE Options 4, Section 3(h) has the identical text. Proposed Options 4, Sections 3(h) generally concerns securities deemed appropriate for options trading. The proposed new rule text adds language stating that subparagraph (h)(2) of Options 4, Section 3 applies to the extent the Exchange-Traded Fund Share is based on international or global indexes, or portfolios that include non-U.S. securities. This language is intended to serve as a guidepost and clarify that (1) subparagraph (h)(2) does not apply to an Exchange-Traded Fund Shares based on a U.S. domestic index or portfolio, and (2) subparagraph (h)(2) includes Exchange-Traded Fund Shares that track a portfolio and do not track an index.

The Exchange proposes to amend Options 4, Section 3(h)(2)(A) to remove the phrase ''for series of portfolio depositary receipts and index fund shares based on international or global indexes,''. Today, Options 4, Section 3(h), subparagraphs (h)(1)[6] and (h)(v)[7] permit the Exchange to list options on Exchange-Traded Fund Shares based on generic listing standards for portfolio depositary receipts and index fund shares without applying component based requirements in subparagraphs (h)(2)(B)–(D). By removing the proposed rule text, the Exchange would make clear that subparagraph (h)(2)(A) applies to Exchange-Traded Fund Shares based on international or global indexes, or portfolios that include non-U.S. securities, that are listed pursuant to generic listing standards and comply with Options 4, Section 3(h) and subparagraph (h)(1). The identical rule text exists within ISE Options 4, Section 3(h)(2)(A).

The Exchange also proposes to amend the term ''comprehensive surveillance agreement'' within Options 4, Section 3(h)(2) (A)–(D) to instead provide ''comprehensive surveillance sharing agreement.'' This amendment will bring greater clarity to the term. Further, the Exchange proposes to add the phrase ''if not available or applicable, the Exchange-Traded Fund's'' within Options 4, Section 3(h)(2)(B), (C), and (D) to clarify that when component securities are not available, the portfolio of securities upon which the Exchange-Traded Fund Share is based can be used

[3] The proposed changes replace the word ''standards'' with ''guidelines,'' insert ''Options 4'' before ''Section 3,'' and remove 2 extraneous uses of ''this.'' Similar replacements are made throughout current Options 4, Section 3(c), including amending a capitalized ''Paragraph.''

[4] The proposed changes replace the word ''standards'' with ''guidelines,'' insert ''Rule'' instead of ''Section 3,'' and remove an unnecessary ''or.''

[5] The amendment to current Options 4, Section 3(i)(B)(4) to add, ''. . . which the Exchange-Traded Fund shares are based . . .'' makes clear that this text applies to Exchange-Traded Fund shares. Also the word ''indexes'' is being changes to ''indices'' within this paragraph and ''similar entity'' is being relocated within the paragraph.

[6] Subsection (h)(i) concerns passive Exchange-Traded Fund Shares. Subsection (h)(1) provides, ''represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that hold portfolios of securities and/or financial instruments, including, but not limited to, stock index futures contracts, options on futures, options on securities and indices, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse repurchase agreements (the ''Financial Instruments''), and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the ''Money Market Instruments'') comprising or otherwise based on or representing investments in broad-based indexes or portfolios of securities and/or Financial Instruments and Money Market Instruments (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities and/or Financial Instruments and Money Market Instruments).''

[7] Subsection (h)(v) concerns active Exchange-Traded Fund Shares. Subsection (h)(v) Provides, ''represents an interest in a registered investment company (''Investment Company'') organized as an open-end management company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies, which is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value (''NAV''), and when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV (''Managed Fund Share'').

instead. The Exchange notes that ''not available'' is intended for cases where the Exchange does not have access to the index components, in those cases the Exchange would look to the portfolio components. The term ''not applicable'' is intended if the fund is active and does not track an index and only the portfolio is available. These amendments will conform the rule text to ISE Options 4, Section 3(h)(2)(A)–(D).

The Exchange also proposes to wordsmith Options 4, Section 3(h)(2)(B) to amend the phrase to provide, ''any non-U.S. component securities of an index on which the Exchange-Traded Fund Shares are based or if not available or applicable, the Exchange-Traded Fund's portfolio of securities that are not subject to comprehensive surveillance sharing agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio;''. Finally, the Exchange proposes to wordsmith Options 4, Section 3(h)(2)(C) and (D) to relocate the phrase ''on which the Exchange-Traded Fund Shares are based'' and add ''or portfolio'' to bring greater clarity to the rule text by conforming the rule text of (C) and (D) to the language within (B). The Exchange believes that the revised wording will bring greater clarity to the rule text and conform the rule text to ISE Options 4, Section 3(h)(2)(B)–(D). The Exchange proposes a non-substantive technical amendment to Options 4, Section 3(C)(2)(A)(ii) to correct a typographical error by changing a ''than'' to a ''that.'' The Exchange proposes a non-substantive technical amendment to Options 4, Section 3(h)(1) to change ''In'' to ''in.''

As noted above NOM Options 4, Section 3(h), which describes a market information sharing agreement, was proposed to be relocated to Options 4, Section 3(i), similar to ISE Options 4, Section 3(i).

The Exchange proposes to amend Options 4, Section 3(j) to conform the rule text to ISE Options 4, Section 3(j). The proposed changes are non-substantive.[8]

As noted, above, Options 4, Section 3(k) was proposed to be relocated to new Options 4, Section 3(b)(6).

The Exchange proposes to remove the header ''Index-Linked Securities'' within Options 4, Section 3(l), and re-letter Options 4, Section 3(l)(i) as Section 3(k). Proposed Options 4, Section 3(k) has non-substantive numbering and citation amendments.

Options 4, Section 3(m) is being relocated into new Options 4C, Section 3 without change. Options 4C is specific to U.S. Dollar-Settled Foreign Currency Options.

Section 4. Withdrawal of Approval of Underlying Securities

The Exchange proposes to remove the first sentence of Options 4, Section 4(a), which provides, ''If put or call options contracts with respect to an underlying security are approved for listing and trading on the Exchange, such approval shall continue in effect until such approval is affirmatively withdrawn by the Exchange.'' This sentence is unnecessary as the second sentence within Options 4, Section 4(a) makes clear that approval continues until it does not meet the requirements. Also, the Exchange proposes to add the following text to the end of this paragraph: ''When all options contracts with respect to any underlying security that is no longer approved have expired, the Exchange may make application to the SEC to strike from trading and listing all such options contracts.'' This text makes clear that options contracts that are no longer approved will not be listed. The remainder of the changes to Options 4, Section 4(a) are non-substantive. This proposal is intended to conform NOM's Options 4, Section 4(a) with ISE Options 4, Section 4(a).

The Exchange proposes to amend Options 4, Section 4(b) to add ''Absent exceptional circumstances . . .'' at the beginning of the section. This phrase adds clarity to the rule text. The remainder of the numbering changes as well as capitalization are non-substantive and intended to conform NOM's Options 4, Section 4(b) with ISE Options 4, Section 4(b). The Exchange also proposes to remove reserved sections.

Options 4, Section 4(c), which is currently reserved, is proposed to be deleted and current Options 4, Section 4(d) is proposed to be re-lettered as ''c''. Minor non-substantive conforming changes are proposed to current Options 4, Section 4(d)–(f).[9]

The Exchange proposes to amend current Options 4, Section 4(h) to re-letter it ''g'' and replace ''security'' with ''Exchange-Traded Fund Shares'' similar to ISE Options 4, Section 4(g). The Exchange proposes to add halt or suspension as other circumstances in which the Exchange shall not open for trading any additional series of option contracts of the class to clarify that this scenario may also exist. The other proposed changes to current Options 4, Section 4(h) are non-substantive.[10]

The Exchange proposes to amend current Options 4, Section 4(i) to re-letter it ''h'' and add ''Absent exceptional circumstances, securities . . .'' at the beginning of the section. This phrase adds clarity to the rule text. The remainder of the numbering changes are non-substantive [11] and conform current NOM's Options 4, Section 4(i) with ISE Options 4, Section 4(h).

The Exchange proposes to adopt new Options 4, Section 4(i) similar to ISE, Options 4, Section 4(i). The proposed new section would provide,

> For Holding Company Depositary Receipts (HOLDRs), the Exchange will not open additional series of options overlying HOLDRs (without prior Commission approval) if:
>
> (1) The proportion of securities underlying standardized equity options to all securities held in a HOLDRs trust is less than 80% (as measured by their relative weightings in the HOLDRs trust); or
>
> (2) less than 80% of the total number of securities held in a HOLDRs trust underlie standardized equity options.

Current Options 4, Section 4 does not describe the withdrawal of HOLDRs. This new text, similar to ISE, would provide for provisions wherein the Exchange will not open additional series of options overlying HOLDRs.

The Exchange proposes to delete current Options 4, Section 4(j), which is reserved, as well as the lettering for Options 4, Section 4(k) which states, ''Index Linked Securities.'' The next existing paragraph is proposed to be Options 4, Section 4(j). The remainder of the numbering changes to this section are non-substantive and conform proposed Options 4, Section 4(j) with ISE Options 4, Section 4(j).

The Exchange proposes to remove Options 4, Section 4(l) related to inadequate volume delisting. To remain competitive with other options markets, the Exchange proposes to adopt the same obligations for continuance of trading.[12] Also, pursuant to proposed

[8] The amendment to current Options 4, Section 3(j) replace the word ''standards'' with ''guidelines.''

[9] The Exchange proposes to remove ''Section 4'', lowercase the term ''Customer,'' add ''options 4'' and remove ''thereof'' within Options 4, Section 4(d)–(f).

[10] The Exchange proposes to amend Options 4, Section 4(h) to add ''Options 4'' and replace ''Section 4'' with ''Rule;'' and replace an ''or'' with an ''and.''

[11] The term Options 4 is being relocated within the proposed new paragraph (h). Also, the term ''Rule'' is being used within proposed new paragraph (h)(1) instead of ''Section 4,'' and ''Section 3.'' ''Upon annual review'' is being removed from proposed new paragraph (h)(2).

[12] Options 4, Section 4(b), as amended, establishes requirements for continued listing, similar to ISE. *See* proposed Phlx Options 3, Section 4(b) which provides, ''Absent exceptional circumstances, an underlying security will not be

new Options 4, Section 5(e) the Exchange will announce securities that have been withdrawn. With this proposal, the Exchange would eliminate the requirement that an option must be trading for more than 6 months. The Exchange notes that this condition is not present on other options markets such as ISE and Cboe Exchange, Inc. (''Cboe'').[13] This also applies to the requirement that the average daily volume of the entire class of options over the last six (6) month period was less than twenty (20) contracts. The Exchange notes that NOM's requirements are different from other options markets. To remain competitive the Exchange proposes to adopt the same standards as ISE so that it may list options similar to other markets.

While the Exchange may in the future determine to delist an option that is singly listed, the Exchange proposes to remove the rule text which provides that ''If the option is singly listed only on the Exchange, the Exchange will cease to add new series and may delist the class of options when there is no remaining open interest.'' This rule text does not exist on ISE and Cboe. The Exchange today provides notification of a delisting to all Participants so therefore it is not necessary to retain the provisions within (b)(2). Also, proposed new Options 4, Section 4(e) establishes the rules by which the Exchange will announce securities that have been withdrawn. The rule text within Options 4, Section 4(b), as amended to conform to ISE rule text, will continue to govern the continued approval of options on the Exchange.

The reference to Options 4, Section 4(m) is proposed to be deleted. The provision that is currently Options 4, Section 4(m) is proposed to become Supplementary Material .01 to Options 4, Section 6 with a minor non-substantive change to the current rule text to capitalize ''rules.''

Section 5. Series of Options Contracts Open for Trading

The Exchange proposes to update citations within Options 4, Section 5 to reflect the replacement of current rule text. These changes are non-substantive.

Section 7. Adjustments

The Exchange proposes non-substantive amendments to Options 4, Section 7. The current text states,

> Options contracts shall be subject to adjustments in accordance with the Rules of the Clearing Corporation. The Exchange will announce adjustments, and such changes will be effective for all subsequent transactions in that series at the time specified in the announcement.

The Exchange proposes to instead provide,

> Options contracts shall be subject to adjustments in accordance with the Rules of the Clearing Corporation. When adjustments have been made, the Exchange will announce that fact, and such changes will be effective for all subsequent transactions in that series at the time specified in the announcement.

The proposal conforms NOM Options 4, Section 7 with ISE Options 4, Section 7.

Section 8. Long-Term Options Contracts

The Exchange proposes to conform NOM Options 4, Section 8 to ISE Options 4, Section 8. The proposed changes are non-substantive. NOM's current rule text provides that with respect to long-term options series, bid/ask differential rules do not apply. The Exchange proposes to add this rule text to Options 4, Section 5(d)(2) within new subsection ''A'' as the bid/ask differential requirements can be found within this rule. The Exchange also proposes to add a new sentence to Options 4, Section 8(a) to refer to Options 4, Section 5(d)(2)(A), which states, ''Bid/ask differentials for long-term options contracts are specified within Options 3, Section 5(d)(2)(A)'' for ease of reference in locating all bid/ask requirements.

Section 9. Limitation on the Liability of Index Licensors for Options on Fund Shares

The Exchange proposes to relocate current Options 4, Section 9, U.S. Dollar-Settled Foreign Currency Option Closing Settlement Value to Options 4C, Section 6 with minor changes to add new lettering.

The Exchange proposes to adopt a new Section 9, titled ''Limitation on the Liability of Index Licensors for Options on Fund Shares'' identical to ISE Options 4, Section 9. ISE and Cboe have similar provisions.[14] The new rule would provide,

> (a) The term ''index licensor'' as used in this Rule refers to any entity that grants the Exchange a license to use one or more indexes or portfolios in connection with the trading of options on Exchange-Traded Fund Shares (as defined in Options 4, Section 3(h)).
>
> (b) No index licensor with respect to any index or portfolio underlying an option on Exchange-Traded Fund Shares traded on the Exchange makes any warranty, express or implied, as to the results to be obtained by any person or entity from the use of such index or portfolio, any opening, intra-day or closing value therefor, or any data included therein or relating thereto, in connection with the trading of any option contract on Exchange-Traded Fund Shares based thereon or for any other purpose. The index licensor shall obtain information for inclusion in, or for use in the calculation of, such index or portfolio from sources it believes to be reliable, but the index licensor does not guarantee the accuracy or completeness of such index or portfolio, any opening, intra-day or closing value therefor, or any data included therein or related thereto. The index licensor hereby disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to any such index or portfolio, any opening, intra-day or closing value therefor, any data included therein or relating thereto, or any option contract on Exchange-Traded Fund Shares based thereon. The index licensor shall have no liability for any damages, claims, losses (including any indirect or consequential losses), expenses or delays, whether direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the person's use of such index or portfolio, any opening, intra-day or closing value therefor, any data included therein or relating thereto, or any option contract on Exchange-Traded Fund Shares based thereon, or arising out of any errors or delays in calculating or disseminating such index or portfolio.

Proposed Section 9(a) defines the term ''index licensor'' as any entity that grants the Exchange a license to use one or more indexes or portfolios in connection with the trading of options on Exchange-Traded Fund Shares (as defined in Options 4, Section 3(h)).

Proposed Options 4, Section 9(b) provides that no index licensor with

deemed to meet the Exchange's requirements for continued approval whenever any of the following occur: (1) There are fewer than 6,300,000 shares of the underlying security held by persons other than those who are required to report their security holdings under Section 16(a) of the Exchange Act. (2) There are fewer than 1,600 holders of the underlying security. (3) The trading volume (in all markets in which the underlying security is traded) has been less than 1,800,000 shares in the preceding twelve (12) months. (4) The underlying security ceases to be an ''NMS stock'' as defined in Rule 600 of Regulation NMS under the Exchange Act. (5) If an underlying security is approved for options listing and trading under the provisions of Options 4, Section 3(c), the trading volume of the Original Security (as therein defined) prior to but not after the commencement of trading in the Restructure Security (as therein defined), including ''when-issued'' trading, may be taken into account in determining whether the trading volume requirement of (3) of this paragraph (b) is satisfied.''

[13] *See* ISE Options 4, Section 4 and Cboe Rule 4.4.

[14] *See* Securities Exchange Act Release No. 45817 (April 24, 2002), 67 FR 21785 (May 1, 2002) (SR–CBOE–2002–19) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Amend Its Rules Relating to the Limitation of Liability for Index Licensors) and 14729 (March 19, 2003), 68 FR 14729 (March 26, 2003) (SR–ISE–2003–09) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange, Inc., Relating to Limiting the Liability of Index Licensors for Options on Fund Shares).

respect to any index or portfolio underlying an option on Exchange-Traded Fund Shares traded on the Exchange makes any warranty, express or implied, as to the results to be obtained by any person or entity from the use of such index or portfolio, any opening, intra-day or closing value therefor, or any data included therein or relating thereto, in connection with the trading of any option contract on Exchange-Traded Fund Shares based thereon or for any other purpose. The index licensor will obtain information for inclusion in, or for use in the calculation of, such index or portfolio from sources it believes to be reliable, but the index licensor does not guarantee the accuracy or completeness of such index or portfolio, any opening, intra-day or closing value therefor, or any data included therein or related thereto. The index licensor disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to any such index or portfolio, any opening, intra-day or closing value therefor, any data included therein or relating thereto, or any option contract on Exchange-Traded Fund Shares based thereon. The index licensor will have no liability for any damages, claims, losses (including any indirect or consequential losses), expenses or delays, whether direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the person's use of such index or portfolio, any opening, intra-day or closing value therefor, any data included therein or relating thereto, or any option contract on Exchange-Traded Fund Shares based thereon, or arising out of any errors or delays in calculating or disseminating such index or portfolio.

Section 10. Back-Up Trading Arrangements

The Exchange proposes to add a new rule to Options 4, Section 10, titled ''Back-Up Trading Arrangements.'' Section 10 is currently reserved.[15] This proposed rule is identical to ISE Options 4, Section 10. This rule would permit NOM to enter into arrangements with one or more other exchanges (each a ''Back-up Exchange'') to permit NOM and its Participants to use a portion of a Back-up Exchange's facilities to conduct the trading of NOM exclusively listed options in the event of a Disabling Event, and permits NOM to provide trading facilities at NOM for another exchange's exclusively listed options if that exchange (a ''Disabled Exchange'') is prevented from trading due to a Disabling Event. Also, the proposed rule would permit NOM to enter into arrangements with a Back-up Exchange to provide for the listing and trading of NOM singly listed options by the Back-up Exchange if NOM's facility becomes disabled, and conversely provide for the listing and trading by NOM of the singly listed options of a Disabled Exchange.

The back-up trading arrangements contemplated by Options 4, Section 10 would ensure that NOM's exclusively listed and singly listed options will have a trading venue if a catastrophe renders its primary facility inaccessible or inoperable.

Section 10(a) describes the back-up trading arrangements that would apply if NOM were the Disabled Exchange. An ''exclusively listed option'' is defined within Section 10(a)(1)(i) to mean an option that is listed exclusively by an exchange (because the exchange has an exclusive license to use, or has proprietary rights in, the interest underlying the option). Proposed paragraph(a)(1)(ii) provides that the facility of the Back-up Exchange used by NOM to trade some or all of NOM's exclusively listed options will be deemed to be a facility of NOM, and such option classes shall trade as listings of NOM. Since the trading of NOM exclusively listed options will be conducted using the systems of the Back-up Exchange, proposed paragraph (a)(1)(iii) provides that the trading of NOM listed options on NOM's facility at the Back-up Exchange shall be conducted in accordance with the rules of the Back-up Exchange, and proposed paragraph (a)(1)(iv) provides that the Back-up Exchange has agreed to perform the related regulatory functions with respect to such trading, in each case except as NOM and the Back-up Exchange may specifically agree otherwise. The Back-up Exchange rules that govern trading on NOM's facility at the Back-up Exchange shall be deemed to be NOM rules for purposes of such trading. Proposed paragraph (a)(1)(v) provides that NOM shall have the right to designate its members that will be authorized to trade NOM exclusively listed options on NOM's facility at the Back-up Exchange and, if applicable, its member(s) that will be a NOM Market Maker in those options.[16] If the Back-up Exchange is unable to accommodate all NOM Participants that desire to trade on NOM's facility at the Back-up Exchange, NOM may determine which Participants shall be eligible to trade at that facility by considering factors such as whether the Participant is a NOM Market Maker in the applicable product(s), the number of contracts traded by the member in the applicable product(s), market performance, and other factors relating to a member's contribution to the market in the applicable product(s). Under proposed paragraph (a)(1)(vi), Participants of the Back-up Exchange shall not be authorized to trade in any NOM exclusively listed options, except that (i) NOM may deputize willing brokers of the Back-up Exchange as temporary NOM Participants to permit them to execute orders as brokers in NOM exclusively listed options traded on NOM's facility at the Back-up Exchange, and (ii) the Back-up Exchange has agreed that it will, at the instruction of NOM, select members of the Back-up Exchange that are willing to be deputized by NOM as temporary NOM Participants authorized to trade NOM exclusively listed options on NOM's facility at the Back-up Exchange for such period of time following a Disabling Event as NOM determines to be appropriate, and NOM may deputize such members of the Back-up Exchange as temporary NOM Participants for that purpose.

The foregoing exceptions would permit members of the Back-up Exchange to trade NOM exclusively listed options on NOM's facility on the Back-up Exchange, if, for example, circumstances surrounding a Disabling Event result in NOM Participants being delayed in connecting to the Back-up Exchange in time for prompt resumption of trading. Options 4, Section 10(a)(2) of the proposed rule provides for the continued trading of NOM singly listed options at the Back-up Exchange in the event of a Disabling Event at NOM. Proposed paragraph (a)(2)(ii) provides that NOM may enter into arrangements with a Back-up Exchange under which the Back-up Exchange will agree, in the event of a Disabling Event, to list for trading option classes that are then singly listed only by NOM. Such option classes would trade on the Back-up Exchange as listings of the Back-up Exchange and in accordance with the rules of the Back-up Exchange. Under proposed paragraph (a)(2)(iii), any such options class listed by the Back-up Exchange that does not satisfy the standard listing and maintenance criteria of the Back-up Exchange will be subject, upon listing by the Back-up Exchange, to delisting (and, thus, restrictions on opening new series, and engaging in opening transactions in those series with open

[15] *See* Securities Exchange Act Release No. 71092 (December 17, 2013), 78 FR 77510 (December 23, 2013) (SR–ISE–2013–61) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Back-Up Trading Arrangements).

[16] Of note, unlike Phlx, NOM does not have rules to appoint Lead Market Makers.

interest, as may be provided in the rules of the Back-up Exchange). NOM singly listed option classes would be traded by members of the Back-up Exchange and by NOM Participants selected by NOM to the extent the Back-up Exchange can accommodate NOM Participants in the capacity of temporary members of the Back-up Exchange. If the Back-up Exchange is unable to accommodate all NOM Participants that desire to trade NOM singly listed options at the Back-up Exchange, NOM may determine which Participants shall be eligible to trade such options at the Back-up Exchange by considering the same factors used to determine which NOM Participants are eligible to trade NOM exclusively listed options at NOM's facility at the Back-up Exchange. Proposed Section (a)(3) provides that NOM may enter into arrangements with a Back-up Exchange to permit NOM Participants to conduct trading on a Back-up Exchange of some or all of NOM's multiply listed options in the event of a Disabling Event. While continued trading of multiply listed options upon the occurrence of a Disabling Event is not likely to be as great a concern as the continued trading of exclusively and singly listed options, NOM nonetheless believes a provision for multiply listed options should be included in the rule so that the exchanges involved will have the option to permit members of the Disabled Exchange to trade multiply listed options on the Back-up Exchange. Such options shall trade as a listing of the Back-up Exchange in accordance with the rules of the Back-up Exchange.

Options 4, Section 10(b) describes the back-up trading arrangements that would apply if NOM were the Back-up Exchange. In general, the provisions in Section (b) are the converse of the provisions in Section (a). With respect to the exclusively listed options of the Disabled Exchange, the facility of NOM used by the Disabled Exchange to trade some or all of the Disabled Exchange's exclusively listed options will be deemed to be a facility of the Disabled Exchange, and such option classes shall trade as listings of the Disabled Exchange. Trading of the Disabled Exchange's exclusively listed options on the Disabled Exchange's facility at NOM shall be conducted in accordance with NOM rules, and NOM will perform the related regulatory functions with respect to such trading, in each case except as the Disabled Exchange and NOM may specifically agree otherwise. NOM rules that govern trading on the Disabled Exchange's facility at NOM shall be deemed to be rules of the Disabled Exchange for purposes of such trading. Sections (b)(2) and (b)(3) describe the arrangements applicable to trading of the Disabled Exchange's singly and multiply listed options at NOM, and are the converse of Sections (a)(2) and (a)(3). Paragraph (b)(2)(i) includes a provision that would permit NOM to allocate singly listed option classes of the Disabled Exchange to a NOM Market Maker in advance of a Disabling Event, without utilizing the allocation process under NOM Rule Options 2, Section 1, to enable NOM to quickly list such option classes upon the occurrence of a Disabling Event.

Options 4, Section 10(c) describes the obligations of Participants with respect to the trading by ''temporary members'' on the facilities of another exchange. Section (c)(1) sets forth the obligations applicable to Participants of a Back-up Exchange who act in the capacity of temporary Participants of the Disabled Exchange on the facility of the Disabled Exchange at the Back-up Exchange. Section (c)(1) provides that a temporary Participant of the Disabled Exchange shall be subject to, and obligated to comply with, the rules that govern the operation of the facility of the Disabled Exchange at the Back-up Exchange. This would include the rules of the Disabled Exchange to the extent applicable during the period of such trading, including the rules of the Disabled Exchange limiting its liability for the use of its facilities that apply to members of the Disabled Exchange. Additionally, (i) such temporary Participant shall be deemed to have satisfied, and the Disabled Exchange has agreed to waive specific compliance with, rules governing or applying to the maintenance of a person's or a firm's status as a Participant of the Disabled Exchange, including all dues, fees and charges imposed generally upon members of the Disabled Exchange based on their status as such, (ii) such temporary Participant shall have none of the rights of a member of the Disabled Exchange except the right to conduct business on the facility of the Disabled Exchange at the Back-up Exchange to the extent described in the Rule, (iii) the Participant associated with such temporary Participant, if any, shall be responsible for all obligations arising out of that temporary Participant's activities on or relating to the Disabled Exchange, and (iv) the clearing member of such temporary Participant shall guarantee and clear the transactions of such temporary Participant on the Disabled Exchange.

Section (c)(2) sets forth the obligations applicable to members of a Disabled Exchange who act in the capacity of temporary Participants of the Back-up Exchange for the purpose of trading singly listed and multiply listed options of the Disabled Exchange. Such temporary Participants shall be subject to, and obligated to comply with, the rules of the Back-up Exchange that are applicable to the Back-up Exchange's own members, including the rules of the Back-up Exchange limiting its liability for the use of its facilities that apply to members of the Back-up Exchange. Temporary Participants of the Back-up Exchange have the same obligations as those set forth in Section (c)(1) that apply to temporary Participants of the Disabled Exchange, except that, in addition, temporary Participants of the Back-up Exchange shall only be permitted (i) to act in those capacities on the Back-up Exchange that are authorized by the Back-up Exchange and that are comparable to capacities in which the temporary Participant has been authorized to act on the Disabled Exchange, and (ii) to trade in those option classes in which the temporary Participant is authorized to trade on the Disabled Exchange.

Options 4, Section 10 provides that the rules of the Back-up Exchange shall apply to the trading of the singly and multiply listed options of the Disabled Exchange traded on the Back-up Exchange's facilities, and (with certain limited exceptions) the trading of exclusively listed options of the Disabled Exchange traded on the facility of the Disabled Exchange at the Back-up Exchange. The Back-up Exchange has agreed to perform the related regulatory functions with respect to such trading (except as the Back-up Exchange and the Disabled Exchange may specifically agree otherwise). Section (d) provides that if a Back-up Exchange initiates an enforcement proceeding with respect to the trading during a back-up period of singly or multiply listed options of the Disabled Exchange by a temporary Participant of the Back-up Exchange, or exclusively listed options of the Disabled Exchange by a member of the Disabled Exchange (other than a member of the Back-up Exchange who is a temporary member of the Disabled Exchange), and such proceeding is in process upon the conclusion of the back-up period, the Back-up Exchange may transfer responsibility for such proceeding to the Disabled Exchange following the conclusion of the back-up period.

With respect to arbitration jurisdiction, proposed Section (d) provides that arbitration of any disputes with respect to any trading during a back-up period of singly or multiply listed options of the Disabled Exchange

or of exclusively listed options of the Disabled Exchange on the Disabled Exchange's facility at the Back-up Exchange will be conducted in accordance with the rules of the Back-up Exchange, unless the parties to an arbitration agree that it shall be conducted in accordance with the rules of the Disabled Exchange.

Proposed Supplementary Material .01 to Options 4, Section 10 clarifies that to the extent Options 4, Section 10 provides that another exchange will take certain action, the Rule is reflecting what that exchange has agreed to do by contractual agreement with NOM, but Options 4, Section 10 is not binding on the other exchange.

Options 4C

The Exchange proposes to relocate current rule text related to criteria to list U.S. Dollar-Settled Foreign Currency Options to new Options 4C and adopting new rule text similar to Phlx [17] to list and trade these securities as described in more detail below.

Section 1. Applicability

Similar to Phlx Options 4C, Section 1 the Exchange proposes to provide,

> The Rules in Options 4C are applicable to U.S. Dollar-Settled Foreign Currency Options. Except to the extent that specific rules in this Section, or unless the context otherwise requires, the provisions of Options 4 are applicable to the trading on the Exchange of U.S. Dollar-Settled Foreign Currency Options.

Proposed Options 4C of the Options Listing Rules covers U.S. Dollar-Settled Foreign Currency Options only.

Section 2. Definitions

The Exchange proposes to adopt rules to list for trading U.S. Dollar-Settled Foreign Currency Options, which products are currently listed and traded on Phlx. To that end, NOM proposes to adopt the same rules as Phlx Options 4C. The Exchange therefore proposes to adopt applicability rules and definitions similar to Phlx Options 4C, Section 2.

The Exchange proposes to state within proposed Options 4C, Section 2 that the Rules in Options 4C shall be applicable to the trading on the Exchange in option contracts issued by The Options Clearing Corporation, the terms and conditions of such contracts, the exercise and settlement thereof, the handling of orders, and the conduct of accounts and other matters relating to options trading. Except to the extent that specific Rules in this Options 4C govern or unless the context otherwise requires, the provisions of the By-Laws and of all other Rules and Policies of the Board of Directors shall be applicable to the trading on the Exchange of option contracts. This proposed rule would also note that foreign currency option contracts purchased and sold on the Exchange are designated by reference to the underlying foreign currency (*e.g.,* the British pound), expiration month, exercise price and type (put or call).

The Exchange also proposes to add the below definitions to Options 4C, Section 2(b) and note that ''The following terms as used in the Rules shall, unless the context otherwise indicates, have the meanings herein specified:''. The definitions that are proposed to be added are:

(1) The term ''aggregate exercise price'' is as defined within Options 1, Section 1(a)(3).

(2) The term ''foreign currency'' is as defined within Options 1, Section 1(a)(20).

(3) The term ''Exchange Spot Price'' in respect of an option contract on a foreign currency means the cash market spot price, for the sale of one foreign currency for another, quoted by various foreign exchange participants for the sale of a single unit of such foreign currency for immediate delivery that is calculated from the foreign currency price quotation reported by the foreign currency price quotation dissemination system selected by the Exchange, to which an appropriate multiplier is applied. The multiplier(s) will be: 100 for the British pound, the Euro, the Swiss Franc, the Canadian dollar, the Australian dollar, the Brazilian real, and the New Zealand dollar; 1,000 for the Chinese yuan, the Danish krone, the Mexican peso, the Norwegian krone, the South African rand, and the Swedish krona; 10,000 for the Japanese yen and the Russian ruble; and 100,000 for the South Korean won.

(4) The term ''unit of underlying foreign currency'' means a single unit of the foreign currency (*e.g.,* one British pound, one Swiss franc, one Canadian dollar, one Australian dollar, one Japanese yen, one Mexican peso, one Euro, one Brazilian real, one Chinese yuan, one Danish krone, one New Zealand dollar, one Norwegian krone, one Russian ruble, one South African rand, one South Korean won, or one Swedish krona).

Section 3. Criteria for Underlying Securities

Options 4, Section 3(m) is being relocated into new Options 4C, Section 3 without change, except that is being re-lettered as ''a''.

Section 4. Withdrawal of Approval of Underlying Securities or Options

NOM proposes to adopt rule text similar to Phlx Options 4C, Section 4 which provides, The Exchange may determine to withdraw approval of an underlying foreign currency whenever it deems such withdrawal advisable in the public interest or for the protection of investors. In the event that the Exchange effects such a withdrawal, the Exchange shall not open for trading any additional series of options of the class covering that underlying foreign currency.

Similar to Phlx, NOM may withdraw approval of an underlying foreign currency whenever it deems such withdrawal advisable in the public interest or for the protection of investors. In the event of a withdrawal, NOM would not open for trading any additional series of options of the class covering that underlying foreign currency.

Section 5. Series of U.S. Dollar-Settled Foreign Currency Options Contracts Open for Trading

Similar to Phlx, NOM proposes to adopt rules to permit it to list and trade U.S. Dollar-Settled Foreign Currency Options. After call option contracts or put option contracts relating to a specific underlying foreign currency has been approved for listing and trading on the Exchange, NOM shall from time to time open for trading series of options therein. Prior to the opening of trading in any series of options, NOM shall fix the expiration month and exercise price of option contracts included in such series. NOM proposes to adopt Options 4C, Section 5(a)(1) which states,

> Within each class of approved U.S. dollar-settled foreign currency options, the Exchange may open for trading series of options expiring in consecutive calendar months (''consecutive month series''), as provided in subparagraph (A) of this paragraph, and series of options expiring at three-month intervals (''cycle month series''), as provided in subparagraph (B) of this paragraph. Prior to the opening of trading in any series of U.S. dollar-settled FCO, the Exchange shall fix the expiration month and exercise price of option contracts included in each such series. The Exchange may initially list exercise strike prices for each expiration of U.S. dollar-settled options on currencies within a 40 percent band around the current Exchange Spot Price at fifty cent ($.50) intervals. Thus, if the Exchange Spot Price of the Euro were at $100.00, the Exchange

[17] *See* Securities Exchange Act Release No. 54989 (December 21, 2006), 71 FR 78506 (December 29, 2006) (SR–Phlx–2006–34) (Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change as Modified by Amendments No. 1, 2, and 3 Thereto Relating to U.S. Dollar-Settled Foreign Currency Options).

would list strikes in $.50 intervals up to $120.00 and down to $80.00, for a total of eighty-one strike prices available for trading. As the Exchange Spot Price for U.S. dollar-settled FCOs moves, the Exchange may list new strike prices that, at the time of listing, do not exceed the Exchange Spot Price by more than 20 percent and are not less than the Exchange Spot Price by more than 20 percent. For example, if at the time of initial listing, the Exchange Spot Price of the Euro is at $100.00, the strike prices the Exchange will list will be $80.00 to $120.00. If the Exchange Spot Price then moves to $105.00, the Exchange may list additional strikes at the following prices: $105.50 to $126.00.

This rule is identical to Phlx's listing rules for U.S. Dollar-Settled Foreign Currency Options within Phlx Options 4C, Section 5(a)(1).

With respect to consecutive month series, as noted above, each class of U.S. dollar-settled foreign currency option, series of options having up to four consecutive expiration months may be opened for trading simultaneously, with the shortest-term series initially having no more than two months to expiration. Additional consecutive month series of the same class may be opened for trading on the Exchange at or about the time a prior consecutive month series expires, and the expiration month of each such new series shall normally be the month immediately succeeding the expiration month of the then outstanding consecutive month series of the same class of options having the longest remaining time to expiration.

With respect to cycle month series, as noted above, NOM may designate one expiration cycle for each class of U.S. dollar-settled foreign currency option. An expiration cycle is four calendar months (''cycle months'') occurring at three-month intervals. With respect to any particular class of U.S. dollar-settled foreign currency option, series of options expiring in the four cycle months designated by the Exchange for that class may be opened for trading simultaneously, with the shortest-term series initially having approximately three months to expiration. Additional cycle month series of the same class may be opened for trading on the Exchange at or about the time a prior cycle month series expires, and the expiration month of each such new series shall normally be approximately three months after the expiration month of the then outstanding cycle month series of the same class of options having the longest remaining time to expiration.

Proposed Options 4C, Section 5(a)(1)(C) provides rules for long-term options series. The Exchange proposes that it may list with respect to any U.S. dollar-settled foreign currencies, options having up to three years from the time they are listed until expiration. There may be up to ten options series, options having up to thirty-six months from the time they are listed until expiration. There may be up to six additional expiration months. Strike price intervals shall not apply to such options series until the time to expiration is less than twelve months. As proposed herein, bid/ask differentials for long-term options contracts are specified within Options 3, Section 5(d)(2)(A). As noted above the Exchange proposes to consolidate the bid/ask within Options 2.

Proposed Options 4C, Section 5(a)(1)(D) provides that for each expiration month opened for trading of U.S. dollar-settled foreign currency options, in addition to the strike prices listed by the Exchange pursuant to subsection (a)(1) of this Options 4, Section 5, the Exchange shall also list a single strike price of $0.01. Finally, the Exchange proposes to state at proposed Options 4C, Section 5(a)(1)(E) that additional series of options of the same class may be opened for trading on the Exchange as the market price of the underlying foreign currency moves substantially from the initial exercise price or prices. The opening of a new series of options on the Exchange shall not effect any other series of options of the same class previously opened.

The rule text proposed herein within Options 4C, Section 5(a)(1)(D) and (E) is identical to the same provisions within Phlx's Options 4C.

With respect to exercise price, NOM proposes within Options 4C, Section 5(b) to provide that the exercise price of each series of foreign currency options opened for trading on the Exchange normally shall be fixed at a price per unit which is reasonably close to the current Exchange Spot Price per unit of the underlying foreign currency in the foreign exchange market at or before the time such series of options is first opened for trading on the Exchange, as determined by finding the arithmetic mean of Exchange Spot Prices as defined in Options 4C, Section 2(b)(3) at or about such time. The Exchange may initially list exercise strike prices for each expiration of U.S. dollar-settled options on currencies within a 40 percent band around the current Exchange Spot Price at fifty cent ($.50) intervals. By way of example, if the Exchange Spot Price of the Euro were at $100.00, the Exchange would list strikes in $.50 intervals up to $120.00 and down to $80.00, for a total of eighty-one strike prices available for trading. As the Exchange Spot Price for U.S. dollar-settled foreign currencies moves, the Exchange may list new strike prices that, at the time of listing, do not exceed the Exchange Spot Price by more than 20 percent and are not less than the Exchange Spot Price by more than 20 percent. For example, if at the time of initial listing, the Exchange Spot Price of the Euro is at $100.00, the strike prices the Exchange will list will be $80.00 to $120.00. If the Exchange Spot Price then moves to $105.00, the Exchange may list additional strikes at the following prices: $105.50 to $126.00.

The Exchange proposes to state within Options 4C, Section 5(c) that in fixing the exercise price of one or more series of options on any underlying foreign currency, NOM may take into account the forward sales prices quoted for that underlying foreign currency in the interbank foreign exchange market.

Lastly, the Exchange proposes to state within Options 4C, Section 5(d) that when put option contracts or put and call option contracts are first opened for trading on an underlying foreign currency, NOM may open a series of put option contracts corresponding to each series of call option contracts open or to be opened for trading on the same underlying foreign currency.

All provisions of Options 4C, Section 5 are identical to Phlx's rules with the exception of cross-citations.

Section 6. U.S. Dollar-Settled Foreign Currency Option Closing Settlement Value

The Exchange proposes to adopt a new Options 4C, Section 6, titled ''U.S. Dollar-Settled Foreign Currency Option Closing Settlement Value'' identical to Phlx Options 4C, Section 6.

The Exchange proposes to provide within Options 4, Section 6(a) that U.S. dollar-settled foreign currency options are settled in U.S. dollars.

The Exchange proposes to provide within Options 4C, Section 6(b) the following,

The closing settlement value for the U.S. dollar-settled FCO on the Australian dollar, the Euro, the British pound, the Canadian dollar, the Swiss franc, the Japanese yen, the Mexican peso, the Brazilian real, the Chinese yuan, the Danish krone, the New Zealand dollar, the Norwegian krone, the Russian ruble, the South African rand, the South Korean won, and the Swedish krona shall be the Exchange Spot Price at 12:00:00 Eastern Time (noon) on the business day of expiration, or, in the case of an option contract expiring on a day that is not a business day, on the business day prior to the expiration date unless the Exchange determines to apply an alternative closing settlement value as a result of extraordinary circumstances.

The closing settlement value for U.S. dollar-settled foreign currency options shall be governed by this provision.

The Exchange proposes to provide within Options 4, Section 6(c) certain liability provisions similar to Phlx Options 4, Section 6(c). The Exchange proposes to state,

> Neither the Exchange, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating the current settlement value or the closing settlement value resulting from an act, condition, or cause beyond the reasonable control of the Exchange including but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; any error, omission, or delay in the reports of transactions in one or more underlying currencies or any error, omission or delay in the reports of the current settlement value or the closing settlement value by the Exchange.

NOM's proposal would cause the Exchange to not be liable for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating the current settlement value or the closing settlement value resulting from an act, condition, or cause beyond the reasonable control of the Exchange including but not limited to, an act of God and other extraordinary circumstances.

Finally, the Exchange proposes to provide within Options 4C, Section 6(d) that the Exchange shall post the closing settlement value on its website or disseminate it through one or more major market data vendors. As noted above, this rule is identical to Phlx Options 4C, Section 6.

Bid/Ask Differentials

The Exchange proposes to amend Options 4, Section 8(a), and Options 4A, Section 12(b)(1)(A) to relocate text concerning bid/ask differentials for long-term option series, without change. Currently, Options 4, Section 8(a) describes the bid/ask differentials for long-term options series for equity options and exchange-traded products and Options 4A, Section 12(b)(1)(A) describes the bid/ask differentials for long-term options series for indexes. Currently, the bid/ask differentials shall not apply to such options series until the time to expiration is less than nine (9) months for equity options and exchange-traded funds as provided for within Options 4, Section 8(a). Currently, bid/ask differentials shall not apply to such options series until the time to expiration is less than nine (9) months for index options as provided for within Options 4A, Section 12(b)(1)(A). The Exchange also proposes to lowercase ''Paragraph: within Options 4A, Section 12(b)(1).

The Exchange proposes to centralize the bid/ask differentials within Options 2, Section 5(d)(2)(A) and add a sentence to both Options 4, Section 8(a) and Options 4A, Section 12(b)(1)(A) that cites to Options 2, Section 5(d)(2)(A) for information on bid/ask differentials for the various products. The Exchange also proposes to capitalize ''ask'' in the title of Options 2, Section 5(d)(2). The Exchange believes that this relocation will provide Market Makers with centralized information regarding their bid/ask differential requirements. The Exchange is not amending the bid/ask differentials; the rule text is simply being relocated.

The Exchange also proposes to update a citation to Options 2, Section 5 within Options 2, Section 4, Obligations of Market Makers, within paragraph (a)(1). Specifically, the Exchange proposes to amend the current citation to ''Section 5(d)(i)'' to instead refer to ''Options 2, Section 5(d)(1).''

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Section 6(b)(5) of the Act,[19] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Conforming NOM's Options 4 Listing Rules to that of ISE Options 4 is part of the Exchange's continued effort to promote efficiency in the manner in which it administers its rules.

The Exchange's proposal to amend Options 4, Sections 1, 2, 5, and 7 reflect non-substantive amendments to conform those rules to similar ISE rules. These proposed changes 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 since the changes are intended to ease the Participants', market participants', and the general public's navigation and reading of the rules and lessen potential confusion and add clarity for market participants.

The proposed amendments to ISE Options 3, Section 3(b) to permit the Exchange, in exceptional circumstances, to select an underlying security even though it does not meet all of the guidelines, is consistent with the Act. Today, the Exchange may establish guidelines to be considered in evaluating potential underlying securities for Exchange options transactions. Providing NOM with the same ability to select an underlying security even though it does not meet all of the guidelines as ISE will permit NOM to list similar options as ISE for competitive purposes.

The Exchange's proposal to add the defined term ''Financial Instruments'' within Options 4, Section 3(h) and also account for money market instruments, U.S. government securities and repurchase agreements, defined by the term ''Money Market Instruments'' similar to ISE Options 4, Section 3(h) is consistent with the Act. The addition of money market instruments, U.S. government securities and repurchase agreements as securities deemed appropriate for options trading will make clear that these agreements are included in the acceptable securities. The Exchange notes that this rule text is clarifying in nature and will more explicitly provide for money market instruments, U.S. government securities and repurchase agreements as a separate category from what is being defined as ''Financial Instruments'' with this proposal. Today, these instruments are eligible as securities deemed appropriate for options trading.

The Exchange's proposal to remove the following products from Options 4, Section 3(h): The ETFS Silver Trust, the ETFS Palladium Trust, the ETFS Platinum Trust or the Sprott Physical Gold Trust, is consistent with the Act because the Exchange no longer lists these products and proposes to remove these products from its listing rules. The Exchange will file a proposal with the Commission if it determines to list these products in the future.

The Exchange's proposal to amend Options 4, Section 3(h) by removing the rule text at the end of the paragraph which provides, ''all of the following conditions are met,'' and creating separate paragraphs for Options 4, Section 3(h)(1) and (2) is consistent with the Act. These amendments will de-link these subparagraphs so they are read independently. Today, Options 4, Section 3(h)(1) applies to all Exchange-Traded Fund Shares. The Exchange's proposal to clarify that Options 4, Section 3(h)(2) applies to only international or global indexes or portfolios that include non-U.S. securities will bring greater clarity to the qualification standards for listing options on Exchange-Traded Fund

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

Shares. ISE Options 4, Section 3(h) currently has similar rule text. Proposed Options 4, Sections 3(h) generally concerns securities deemed appropriate for options trading. The proposed new rule text adds language stating that subparagraph (h)(2) of Options 4, Section 3 applies to the extent the Exchange-Traded Fund Share is based on international or global indexes or portfolios that include non-U.S. securities. This language is intended to serve as a guidepost and clarify that (1) subparagraph (h)(2) does not apply to an Exchange-Traded Fund Shares based on a U.S. domestic index or portfolio, and (2) subparagraph (h)(2) includes Exchange-Traded Fund Shares that track a portfolio and do not track an index.

The Exchange's proposal to amend Options 4, Section 3(h)(2)(A) to remove the phrase ''for series of portfolio depositary receipts and index fund shares based on international or global indexes,'' is consistent with the Act. Today, Options 4, Section 3(h), subparagraphs (h)(1) and (h)(v) permit the Exchange to list options on Exchange-Traded Fund Shares based on generic listing standards for portfolio depositary receipts and index fund shares without applying component based requirements in subparagraphs (h)(2)(B)–(D). By removing the proposed rule text, the Exchange would make clear that subparagraph (h)(2)(A) applies to Exchange-Traded Fund Shares based on international or global indexes, or portfolios that include non-U.S. securities, that are listed pursuant to generic listing standards and comply with Options 4, Section 3(h) and subparagraph (h)(1).

The Exchange's proposal to amend the term ''comprehensive surveillance agreement'' within Options 4, Section 3(h)(2) (A)–(D) to instead provide ''comprehensive surveillance sharing agreement'' is consistent with the Act as the amendment will bring greater clarity to the term.

The Exchange's proposal to add the phrase ''if not available or applicable, the Exchange-Traded Fund's'' to Options 4, Section 3(h)(2)(B), (C), and (D) is consistent with the Act as it will clarify that when component securities are not available, the portfolio of securities upon which the Exchange-Traded Fund Share is based can be used instead. This rule text currently exists within ISE Options 4, Section 3(h).

The Exchange's proposal to amend and relocate the rule text within Options 4, Section 3(h)(2)(B), (C), and (D) will bring greater clarity to the current rule text by explicitly providing that the index being referenced is the one on which the Exchange-Traded Fund Shares is based. Also, adding ''or portfolio'' to Options 4, Section 3(h)(2)(C), and (D) will bring greater clarity to the rule text by conforming the rule text of (C) and (D) to the language within (B).

The proposed amendments to Options 4, Section 3(h) will conform NOM's rule text to ISE Options 4, Section 3(h).

The remainder of the change to Options 3, Section 3 are non-substantive and intended to conform to ISE Options 3, Section 3. These proposed changes 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 since the changes are intended to ease the Participants', market participants', and the general public's navigation and reading of the rules and lessen potential confusion and add clarity for market participants.

The proposed amendments to Options 4, Section 4 remove unnecessary rule text and make clear that options contracts that are no longer approved will not be listed. The proposed amendments to adopt new Options 4, Section 4(i) similar to ISE, Options 4, Section 4(i), are consistent with the Act. Today, the Exchange would not open additional series of HOLDRs without filing a rule change with the Commission and adopting a corresponding rule. This rule text, similar to ISE, explicitly provides that the Exchange would not open additional series of options overlying HOLDRs (without prior Commission approval) if: (1) The proportion of securities underlying standardized equity options to all securities held in a HOLDRs trust is less than 80% (as measured by their relative weightings in the HOLDRs trust); or (2) less than 80% of the total number of securities held in a HOLDRs trust underlie standardized equity options. This rule text bring greater clarity to NOM's rules in that HOLDRs would not be in certain circumstances.

The Exchange's proposal to remove the rule text within Options 4, Section 4(l), related to inadequate volume delisting, is consistent with the Act. To remain competitive with other options markets, the Exchange proposes to adopt the same obligations for continuance of trading.[20] Also, pursuant to proposed new Options 4, Section 5(e) the Exchange will announce securities that have been withdrawn. With this proposal, the Exchange would eliminate the requirement that an option must be trading for more than 6 months. The Exchange notes that this condition is not present on other options markets such as ISE and Cboe.[21] This also applies to the requirement that the average daily volume of the entire class of options over the last six (6) month period was less than twenty (20) contracts. The Exchange notes that NOM's requirements are different from other options markets and to remain competitive the Exchange proposes to adopt the same standards as ISE to remain competitive and list similar options as other markets. While the Exchange may in the future determine to delist an option that is singly listed, the Exchange's proposal to remove the rule text which provides that ''If the option is singly listed only on the Exchange, the Exchange will cease to add new series and may delist the class of options when there is no remaining open interest'' is consistent with the Act. This rule text does not exist on ISE and Cboe. Today, the Exchange provides notification of a delisting to all Participants making it unnecessary to retain the current provisions within (b)(2). Also, proposed new Options 4, Section 4(e) establishes the rules by which the Exchange will announce securities that have been withdrawn. The rule text within Options 4, Section 4(b), as amended to conform to ISE rule text, will continue to govern the continued approval of options on the Exchange.

The remainder of the changes to Options 3, Section 3 remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protects investors and the public interest. Overall, these changes are of a non-substantive nature and either modify, clarify or relocate the existing Rulebook language to reflect the language of the ISE version of the rule and are intended to ease the Participants', market participants', and the general public's navigation and reading of the rules and lessen potential confusion and add clarity for market participants.

The Exchange believes that the changes to proposed Options 4, Section 8 remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protects investors and the public interest because the changes are mainly of a non-substantive nature with much of the rule text largely simply being relocated from current Options 4, Section 5(a)(i)(D) to new Options 4, Section 8(a) with some minor amendments and is intended to ease the

[20] Options 4, Section 4(b), as amended, establishes requirements for continued listing, similar to ISE.

[21] *See* ISE Options 4, Section 4 and Cboe Rule 4.4.

Participants', market participants', and the general public's navigation and reading of the rules and lessen potential confusion and add clarity for market participants.

The Exchange's proposal to amend Options 3, Section 8 and Options 4A, Section 12(b)(1)(A) to relocate text concerning bid/ask differentials for long-term option series is consistent with the Act. The Exchange's proposal will centralize the bid/ask differentials within Options 2, Section 5(d)(2)(A) and add a sentence to both Options 3, Section 8 and Options 4A, Section 12(b)(1)(A) that cites to Options 2, Section 5(d)(2)(A) for information on bid/ask differentials for the various products. The Exchange is not amending the bid/ask differentials; the rule text is simply being relocated. The Exchange believes that this relocation will provide Market Makers with centralized information regarding their bid/ask differential requirements.

The Exchange's proposal to amend the current citation to ''Section 5(d)(i)'' within Options 2, Section 4(a)(1) to instead refer to ''Options 2, Section 5(d)(1)'' is a non-substantive amendment that will bring greater clarity to the Exchange's rules.

The remainder of the proposed changes to Options 3, Section 8 are non-substantive.

The Exchange believes that adopting a new Section 9, Limitation on the Liability of Index Licensors for Option on Fund Share, similar to ISE, is consistent with the Act. Specifically, this proposal seeks to limit the liability of index licensors who grant NOM a license to use their underlying indexes or portfolios in connection with the trading of options on Fund Shares. This rule text is identical to ISE rule text.[22] Proposed Section 9(b) provides that no index licensor with respect to any index or portfolio underlying an option on Exchange-Traded Fund Shares traded on the Exchange makes any warranty, express or implied, as to the results to be obtained by any person or entity from the use of such index or portfolio, any opening, intra-day or closing value therefor, or any data included therein or relating thereto, in connection with the trading of any option contract on Exchange-Traded Fund Shares based thereon or for any other purpose. The disclaimers within proposed Section 9 are consistent with the Act in that these disclaimers provide market participants with relevant information as to the liabilities on option contracts on Exchange-Traded Fund Shares.

The Exchange believes that the adoption of Options 4, Section 10, Back-up Trading Arrangements, will provide NOM with similar abilities as ISE to permit NOM to enter into arrangements with one or more other exchanges to permit NOM and its Participants to use a portion of a Back-up Exchange's facilities to conduct the trading of NOM exclusively listed[23] options in the event of a Disabling Event, and similarly to permit NOM to provide trading facilities for another exchange's exclusively listed options if a ''Disabled Exchange is prevented from trading due to a Disabling Event. With this proposal, NOM is proposing to adopt listing rules similar to Phlx to list and trade U.S. Dollar-Settled Foreign Currency Options. NOM believes that it is important that it develop back-up trading arrangements to minimize the potential disruption and market impact that a Disabling Event could cause. The proposed rule changes are designed to address the key elements necessary to mitigate the effects of a Disabling Event effecting the Exchange, minimize the impact of such an event on market participants, and provide for a liquid and orderly marketplace for securities listed and traded on the Exchange if a Disabling Event occurs. In particular, the proposed rule change is intended to ensure that NOM's exclusively listed and singly listed products will have a trading venue in the event that trading at NOM is prevented due to a Disabling Event. The Exchange believes that having these back-up trading arrangements in place will minimize potential disruptions to the market and investors if a catastrophe occurs that requires the Exchange's primary facility to be closed for an extended period. Phlx and ISE have a similar rule,[24] and the Exchange believes that it is important to the protection of investors and the public interest that it also adopt rules that allow NOM exclusively and singly listed options to continue to trade in the event of a Disabling Event. The proposed rule change also provides authority for NOM to provide a back-up trading venue should another exchange be effected by a Disabling Event, which will benefit the market and investors if a Disabling Event were to happen on another exchange that has entered into a back-up trading arrangement with NOM. Finally, the proposed rule change grants authority to Exchange officials to take action under emergency conditions, which should enable key actions to be taken by NOM representatives in the event of a Disabling Event, and clarifies the fees that will apply if these back-up trading arrangements are invoked, which will reduce investor confusion and minimize the disruption to investors associated with a Disabling Event. Under proposed paragraph (a)(1)(vi), members of the Back-up Exchange shall not be authorized to trade in any NOM exclusively listed options, except that (i) NOM may deputize willing brokers of the Back-up Exchange as temporary NOM Participants to permit them to execute orders as Participants in NOM exclusively listed options traded on NOM's facility at the Back-up Exchange, and (ii) the Back-up Exchange has agreed that it will, at the instruction of NOM, select members of the Back-up Exchange that are willing to be deputized by NOM as temporary NOM members authorized to trade NOM exclusively listed options on NOM's facility at the Back-up Exchange for such period of time following a Disabling Event as NOM determines to be appropriate, and NOM may deputize such members of the Back-up Exchange as temporary NOM members for that purpose. The foregoing exceptions would permit members of the Back-up Exchange to trade NOM exclusively listed options on NOM's facility on the Back-up Exchange, if, for example, circumstances surrounding a Disabling Event result in NOM members being delayed in connecting to the Back-up Exchange in time for prompt resumption of trading.

The Exchange's proposal to adopt rules to list and trade U.S. Dollar-Settled Foreign Currency Options on NOM that are currently listed and traded on Phlx is consistent with the Act. Specifically, NOM proposes to relocate current rule text related to criteria for listing U.S. Dollar-Settled Foreign Currency Options to new Options 4C and adopting rules to list U.S. Dollar-Settled Foreign Currency Options similar to Phlx.[25] Today, sufficient venues exist for obtaining reliable information on the currencies so that investors in U.S. dollar-settled Foreign Currency Options can monitor the underlying spot market in the currencies. NOM will integrate

[22] *See* ISE Options Listing Rule Section 9.

[23] As defined within the proposed rule, the term ''exclusively listed option'' means an option that is listed exclusively by an exchange (because the exchange has an exclusive license to use, or has proprietary rights in, the interest underlying the option).

[24] *See* Phlx and ISE Rules Options 3, Section 10.

[25] *See* Securities Exchange Release No. 54989 (December 21, 2006), 71 FR 78506 (December 29, 2006) (SR–Phlx–2006–34) (Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change as Modified by Amendments No. 1, 2, and 3 Thereto Relating to U.S. Dollar-Settled Foreign Currency Options). Today, NOM's rules contain the criteria to list U.S. Dollar-Settled Foreign Currency Options only.

U.S. dollar-settled index options, as well as for physical delivery foreign currency options at the time that NOM lists dollar-settled Foreign Currency Options. In addition, the NOM may obtain trading information via the ISG from other exchanges who are members or affiliates of the ISG. U.S. dollar-settled FCO contracts will be aggregated with physical delivery contracts for position and exercise limit purposes. Exchange rules designed to protect public customers trading in FCOs would apply to U.S. dollar-settled FCOs on the Currencies. The Exchange believes that the adoption of these rules will offer investors another venue on which to transact U.S. Dollar-Settled Foreign Currency Options. The listing of U.S. Dollar-Settled Foreign Currency Options will enhance competition by providing investors with an additional investment vehicle.

Similar to Phlx, NOM would adopt an applicability rule within proposed Options 4C, Section 1 and defined terms within Section 2. The Exchange proposes that the criteria for listing U.S. Dollar-Settled Foreign Currency Options be relocated from current Options 4, Section 3(m). Similar to Phlx, NOM rules would adopt rules related to the withdrawal of approval of underlying securities or options to permit NOM to withdraw approval of an underlying foreign currency whenever it deems such withdrawal advisable in the public interest or for the protection of investors. In the event of a withdrawal, NOM would not open for trading any additional series of options of the class covering that underlying foreign currency. Also, NOM proposes to adopt a new Options 4C, Section 5 to describe the manner in which it would list and trade U.S. Dollar-Settled Foreign Currency Options. After call option contracts or put option contracts relating to a specific underlying foreign currency has been approved for listing and trading on the Exchange, NOM shall from time to time open for trading series of options therein. Prior to the opening of trading in any series of options, NOM shall fix the expiration month and exercise price of option contracts included in such series. This rule is identical to Phlx's listing rules for U.S. Dollar-Settled Foreign Currency Options within Phlx Options 4C, Section 5. The determination of the closing settlement value is described within Options 4C, Section 6. The Exchange believes that permitting NOM to list U.S. Dollar-Settled Foreign Currency Options, similar to Phlx, would allow market participants another venue in which to transact U.S. Dollar-Settled Foreign Currency Options.

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 relocation of the Options Listing Rules will facilitate the use of the Rulebook by Participants of the Exchange, who are members of other Affiliated Exchanges; other market participants; and the public in general. The changes are consistent with the ISE Rulebook.

The Exchange's proposal to amend Options 4, Sections 1, 2, 5, and 7 reflects non-substantive amendments to conform those rules to similar ISE rules at Options 4, Sections 1, 2, 5, and 7. These proposed changes do not impose an undue burden on competition since the changes are intended to ease the Participants', market participants', and the general public's navigation and reading of the rules and lessen potential confusion and add clarity for market participants.

The proposed amendments to ISE Options 3, Section 3(b) to permit the Exchange, in exceptional circumstances, to select an underlying security even though it does not meet all of the guidelines does not impose an undue burden on competition. Today, the Exchange may establish guidelines to be considered in evaluating potential underlying securities for Exchange options transactions. Providing NOM with the same ability to select an underlying security even though it does not meet all of the guidelines as ISE will permit NOM to list similar options as ISE for competitive purposes.

The Exchange's proposal to add the defined term ''Financial Instruments'' within Options 4, Section 3(h) and also account for money market instruments, U.S. government securities and repurchase agreements, defined by the term ''Money Market Instruments'' similar to ISE Options 4, Section 3(h) does not impose an undue burden on competition. The addition of money market instruments, U.S. government securities and repurchase agreements as securities deemed appropriate for options trading will make clear that these agreements are included in the acceptable securities.

The Exchange's proposal to remove the following products from Options 4, Section 3(h): The ETFS Silver Trust, the ETFS Palladium Trust, the ETFS Platinum Trust or the Sprott Physical Gold Trust, does not impose an undue burden on competition. The Exchange no longer lists these products and proposes to remove them the products from its listing rules.

The Exchange's proposal to amend Options 4, Section 3(h) by removing the rule text at the end of the paragraph which provides, ''all of the following conditions are met,'' and creating separate paragraphs for Options 4, Section 3(h)(1) and (2) does not impose an undue burden on competition. These amendments will de-link these subparagraphs so they are read independently. Today, Options 4, Section 3(h)(1) applies to all Exchange-Traded Fund Shares. The Exchange's proposal to clarify that Options 4, Section 3(h)(2) applies to only international or global Exchange-Traded Fund Shares that include non-U.S. securities will bring greater clarity to the qualification standards for listing options on Exchange-Traded Fund Shares. Specifically, this language is intended to serve as a guidepost and clarify that (1) subparagraph (h)(2) does not apply to an Exchange-Traded Fund Shares based on a U.S. domestic index or portfolio, and (2) subparagraph (h)(2) includes Exchange-Traded Fund Shares that track a portfolio and do not track an index. This amendment will uniformly apply the criteria within Options 4, Section 3 when it lists options products on NOM.

The Exchange's proposal to amend Options 4, Section 3(h)(2)(A) to remove the phrase ''for series of portfolio depositary receipts and index fund shares based on international or global indexes,'' does not impose an undue burden on competition. Today, Options 4, Section 3(h), subparagraphs (h)(1) and (h)(v) permit the Exchange to list options on Exchange-Traded Fund Shares based on generic listing standards for portfolio depositary receipts and index fund shares without applying component based requirements in subparagraphs (h)(2)(B)–(D). By removing the proposed rule text, the Exchange would make clear that subparagraph (h)(2)(A) applies to Exchange-Traded Fund Shares based on international or global indexes, or portfolios that include non-U.S. securities, that are listed pursuant to generic listing standards and comply with Options 4, Section 3(h) and subparagraph (h)(1). This amendment will uniformly apply the criteria within Options 4, Section 3 when it lists options products on NOM.

The Exchange's proposal to amend the term ''comprehensive surveillance agreement'' within Options 4, Section 3(h)(2) (A)–(D) to instead provide ''comprehensive surveillance sharing agreement'' does not impose an undue

burden on competition as the amendment will bring greater clarity to the term.

The Exchange's proposal to add the phrase ''if not available or applicable, the Exchange-Traded Fund's'' to Options 4, Section 3(h)(2)(B), (C), and (D) does not impose an undue burden on competition as it will clarify that when component securities are not available, the portfolio of securities upon which the Exchange-Traded Fund Share is based can be used instead.

The Exchange's proposal to amend and relocate the rule text within Options 4, Section 3(h)(2)(B), (C), and (D) will bring greater clarity to the current rule text by explicitly providing that the index being referenced is the one on which the Exchange-Traded Fund Shares is based. Also, adding ''or portfolio'' to Options 4, Section 3(h)(2)(C), and (D) will bring greater clarity to the rule text by conforming the rule text of (C) and (D) to the language within (B).

The proposed amendments to Options 4, Section 4 remove unnecessary rule text and make clear that options contracts that are no longer approved will not be listed. The proposed amendments to adopt new Options 4, Section 4(i), similar to ISE, Options 4, Section 4(i), does not impose an undue burden on competition. The amendments would provide for provisions wherein the Exchange will not open additional series of options overlying HOLDRs similar to ISE, which provisions do not currently exist.

The Exchange's proposal to remove the rule text within Options 4, Section 4(l), related to inadequate volume delisting, does not impose an undue burden on competition. To remain competitive with other options markets, the Exchange proposes to adopt the same obligations for continuance of trading.[26] Also, pursuant to proposed new Options 4, Section 5(e) the Exchange will announce securities that have been withdrawn. With this proposal, the Exchange would eliminate the requirement that an option must be trading for more than 6 months. The Exchange notes that this condition is not present on other options markets such as ISE and Cboe.[27] This also applies to the requirement that the average daily volume of the entire class of options over the last six (6) month period was less than twenty (20) contracts. The Exchange notes that NOM's requirements are different from other options markets and to remain competitive the Exchange proposes to adopt the same standards as ISE to remain competitive and list similar options as other markets. The Exchange's proposal removes the rule text which provides that ''If the option is singly listed only on the Exchange, the Exchange will cease to add new series and may delist the class of options when there is no remaining open interest'' does not impose an undue burden on competition. This rule text does not exist on ISE and Cboe. The Exchange today provides notification of a delisting to all members so therefore it is not necessary to retain the provisions within (b)(2). Also, proposed new Options 4, Section 4(e) establishes the rules by which the Exchange will announce securities that have been withdrawn.

The Exchange believes that the changes to proposed Options 4, Section 8 do not impose an undue burden on competition as the changes are mainly of a non-substantive nature with much of the rule text largely simply being relocated from current Options 4, Section 5(a)(i)(D) to new Options 4, Section 8(a) with some minor amendments.

The Exchange's proposal to amend Options 3, Section 8 and Options 4A, Section 12(b)(1)(A) to relocate rule text concerning bid/ask differentials for long-term option series, without change, does not impose an undue burden on competition. The Exchange believes that this relocation will provide Market Makers with centralized information regarding their bid/ask differential requirements.

Adopting a new Section 9, Limitation on the Liability of Index Licensors for Option on Fund Shares, similar to ISE, does not impose an undue burden on competition. The proposal seeks to limit the liability of index licensors who grant NOM a license to use their underlying indexes or portfolios in connection with the trading of options on Fund Shares. This rule text is identical to ISE rule text.[28] Proposed Section 9(b) provides that no index licensor with respect to any index or portfolio underlying an option on Exchange-Traded Fund Shares traded on the Exchange makes any warranty, express or implied, as to the results to be obtained by any person or entity from the use of such index or portfolio, any opening, intra-day or closing value therefor, or any data included therein or relating thereto, in connection with the trading of any option contract on Exchange-Traded Fund Shares based thereon or for any other purpose.

The Exchange believes that the adoption of Options 4, Section 10, Back-up Trading Arrangements, will provide NOM with similar abilities as ISE to permit NOM to enter into arrangements with one or more other exchanges to permit NOM and its Participants to use a portion of a Back-up Exchange's facilities to conduct the trading of NOM exclusively listed[29] options in the event of a Disabling Event, and similarly to permit NOM to provide trading facilities for another exchange's exclusively listed options if that Disabled Exchange is prevented from trading due to a Disabling Event.

Permitting NOM to list U.S. Dollar-Settled Foreign Currency Options similar to Phlx would allow market participants another venue in which to transact U.S. Dollar-Settled Foreign Currency Options. U.S. Dollar-Settled Foreign Currency Options would be available for trading to all market participants. The proposal will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[30] and subparagraph (f)(6) of Rule 19b–4 thereunder.[31]

A proposed rule change filed under Rule 19b–4(f)(6)[32] normally does not

[26] Options 4, Section 4(b), as amended, establishes requirements for continued listing, similar to ISE.

[27] *See* ISE Options 4, Section 4 and Cboe Rule 4.4.

[28] *See* ISE Options Listing Rule Section 9.

[29] As defined within the proposed rule, the term ''exclusively listed option'' means an option that is listed exclusively by an exchange (because the exchange has an exclusive license to use, or has proprietary rights in, the interest underlying the option).

[30] 15 U.S.C. 78s(b)(3)(A)(iii).

[31] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[32] 17 CFR 240.19b–4(f)(6).

become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[33] the Commission may designate a shorter time if such action is consistent with protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange's proposal does not raise any new or novel issues. Therefore, the Commission believes that waving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposed rule change to be operative on upon filing.[34]

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–NASDAQ–2021–059 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–2021–059. 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–2021–059 and should be submitted on or before August 26, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–16676 Filed 8–4–21; 8:45 am]

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[33] 17 CFR 240.19b–4(f)(6).

[34] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92525; File No. SR–FINRA–2020–04]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 and Amendment No. 2, To Adopt FINRA Rule 4111 (Restricted Firm Obligations) and FINRA Rule 9561 (Procedures for Regulating Activities Under Rule 4111)

July 30, 2021.

I. Introduction

On November 16, 2020, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''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's rules to help further address the issue of associated persons with a significant history of misconduct and the broker-dealers that employ them. The proposed rule change was published for comment in the **Federal Register** on December 4, 2020.[3] On January 12, 2021, FINRA consented to extend until March 4, 2021, 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.[4] On March 4, 2021, FINRA responded to the comment letters received in response to the Notice.[5] On March 4, 2021, the Commission filed an order instituting proceedings to determine whether to approve or disapprove the proposed rule change.[6] On May 7, 2021, FINRA consented to an extension of the time period in which the Commission must approve or disapprove the proposed rule change to July 30, 2021.[7] On May 14, 2021, FINRA filed an amendment to the proposed rule change (''Amendment No. 1'').[8] On July 20, 2021, FINRA filed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 90527 (Nov. 27, 2020), 85 FR 78540 (Dec. 4, 2020) (File No. SR–FINRA–2020–041) (''Notice'').

[4] *See* letter from Michael Garawski, Associate General Counsel, OGC Regulatory Practice and Policy, FINRA, to Daniel Fisher, Branch Chief, Division of Trading and Markets, Commission, dated January 12, 2021. This letter is available at *https://www.finra.org/sites/default/files/2021-01/SR-FINRA-2020-041-Extension1.pdf.*

[5] *See* letter from Michael Garawski, Associate General Counsel, Office of General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated March 4, 2021 (''FINRA March 4 Letter''). The FINRA March 4 Letter is available at *https://www.sec.gov/comments/sr-finra-2020-041/srfinra2020041-8445557-229759.pdf.*

[6] *See* Exchange Act Release No. 91258 (Mar. 4, 2021), 86 FR 13780 (Mar. 10, 2021) (File No. SR–FINRA–2020–041) (''Order Instituting Proceedings''). The Order Instituting Proceedings is available at *https://www.sec.gov/rules/sro/finra/2021/34-91258.pdf.*

[7] *See* letter from Michael Garawski, Associate General Counsel, Office of General Counsel, FINRA, to Daniel Fisher, Branch Chief, Division of Trading and Markets, Commission, dated May 7, 2021. This letter is available at *https://www.finra.org/sites/default/files/2021-05/sr-finra-2020-041-extension2.pdf.*

[8] Amendment No. 1 is available at *https://www.finra.org/sites/default/files/2021-05/sr-finra-2020-041-amendment1.pdf.* FINRA has made a technical correction to the definition of ''Member Firm Pending Events'' in proposed Rule 4111(i)(4)(E). In the initial filing of the proposed rule change, proposed Rule 4111(i)(4)(E)(ii) included ''a pending investigation by a regulatory authority'' reportable on the member's Uniform Registration Forms as among the Member Firm Pending Events. The Uniform Registration Forms, however, do not contain disclosure questions or

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a second amendment to the proposed rule change (''Amendment No. 2''),[9] as well as a second response to the comment letters received in response to the Notice.[10] This order approves the proposed rule change, as modified by Amendment No. 1 and Amendment No. 2.

II. Description of the Proposed Rule Change

Background

FINRA's proposed rule change would adopt a new Rule 4111 to address the risks that can be posed to investors by broker-dealers and their associated persons with a history of misconduct.[11] The proposal would impose new obligations on broker-dealers with significantly higher levels of risk-related disclosures (including, notably, sales-practice related disclosure events) than other similarly sized peers based on numeric, threshold-based criteria.[12]

Specifically, FINRA is proposing to adopt FINRA Rule 4111 (Restricted Firm Obligations) to require member firms that are identified as ''Restricted Firms'' [13] to deposit cash or qualified securities in a segregated account, adhere to specified conditions or restrictions, or comply with a combination of such obligations.[14] FINRA is also proposing to adopt FINRA Rule 9561 (Procedures for Regulating Activities) and amend FINRA Rule 9559 (Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series), to create a new expedited proceeding to implement proposed Rule 4111.[15] In particular, the proposed rule change would establish a process to give a Restricted Firm an opportunity to challenge the designation and the resulting obligations of that designation, as well as give the firm a one-time opportunity to avoid the imposition of obligations by voluntarily reducing its workforce.[16]

The proposed rule change is designed to protect investors and the public interest by strengthening tools available to FINRA to address the risks posed by member firms with a significant history of misconduct, including firms with a high concentration of individuals with a significant history of misconduct.[17] The proposed rule should create incentives for firms to change behaviors and activities, either to avoid being designated as a Restricted Firm or lose an existing Restricted Firm designation, to mitigate FINRA's concerns.[18]

This proposal is designed to address persistent compliance issues that arise at some FINRA member firms that generally do not carry out their supervisory obligations to achieve compliance with applicable securities laws and regulations and FINRA rules, and act in ways that could harm their customers and erode confidence in the brokerage industry.[19] According to FINRA, recent academic studies have found that some firms persistently employ registered representatives who engage in misconduct, and that misconduct can be concentrated at these firms.[20] FINRA states that these studies also provide evidence that the past disciplinary history and other regulatory events associated with a firm or individual can be predictive of future events.[21] While these firms may eventually be forced out of the industry through FINRA action or otherwise, FINRA observed that these compliance issues include a persistent, if limited, population of firms with a history of misconduct that may not be acting appropriately as a first line of defense to prevent customer harm.[22]

FINRA states that such firms expose investors to real risk.[23] For example, FINRA states that it has identified certain firms that have a concentration of associated persons with a history of misconduct, and some of these firms consistently hire such individuals and fail to reasonably supervise their activities.[24] FINRA has found that these firms generally have a retail business engaging in cold calling investors to make recommendations of securities, often to vulnerable customers.[25] FINRA has also identified groups of individual representatives who move from one firm of concern to another firm of concern.[26]

Disclosure Reporting Pages (''DRP'') fields about pending investigations by a regulatory authority concerning firms. Amendment No. 1 proposes deleting ''a pending investigation by a regulatory authority'' from the proposed definition of Member Firm Pending Events. Because Amendment No. 1 to the proposed rule change is technical in nature and does not materially alter the substance of the proposed rule change or raise any novel regulatory issues, it is not subject to notice and comment.

[9] Amendment No. 2 is available at *https://www.finra.org/sites/default/files/2021-07/SR-FINRA-2020-041-Amendment2.pdf.* In the initial filing of the proposed rule change, proposed Rule 4111 included several references to the requirement that a Restricted Firm (defined below) ''maintain'' a deposit in a segregated account. Amendment No. 2 proposes several changes to, among other things, eliminate the word ''maintain'' from proposed Rule 4111 and clarify that a firm is not required to deposit additional funds or qualified securities where the initial deposit consists of qualified securities that have declined in value, nor is it permitted to withdraw any such funds or securities merely because the value of such qualified securities increased in value. It further clarifies that if FINRA thereafter re-designates a firm as a Restricted Firm in the following year, such firm would be required to deposit additional cash or qualified securities if necessary, at the appropriate time during that process, to meet the required deposit amount. Because Amendment No. 2 to the proposed rule change is technical in nature and does not materially alter the substance of the proposed rule change or raise any novel regulatory issues, it is not subject to notice and comment.

[10] *See* letter from Michael Garawski, Associate General Counsel, Office of General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated July 20, 2021 (''FINRA July 20 Letter''). The FINRA July 20 Letter is available at *https://www.sec.gov/comments/sr-finra-2020-041/srfinra2020041-9083092-246591.pdf.*

[11] As discussed more fully below, the proposed rule change would apply to firms who, based on statistical analysis of their prior disclosure events, including regulatory actions, customer arbitrations and litigations of brokers, are substantially more likely than similarly-sized peers to subsequently have a range of additional events indicating various types of harm or potential harm to investors. *See* Notice at 78565.

[12] As described below, such ''risk-related disclosures'' encompass those items included within the ''Preliminary Identification Metrics'' found in proposed Rule 4111(i)(10). Higher levels of risk-related disclosures are hereinafter referred to as ''outlier-level disclosure events'' or ''outlier-level risks.''

[13] As described more fully below, a ''Restricted Firm'' is a firm identified through the proposed multi-step process to have a significantly higher level of risk-related disclosures than similarly sized peers and determined by FINRA to pose a high degree of risk to the investing public. *See* discussion *infra* Proposed Rule 4111 (Restricted Firm Obligations).

[14] *See* Notice at 78540.

[15] *See* Notice at 78542–78550. The proposed rule change would cover Capital Acquisition Brokers (''CABs''). FINRA is proposing to adopt CAB Rule 412 (Restricted Firm Obligations), to clarify that the member firms that have elected to be treated as CABs would be subject to proposed FINRA Rule 4111. The proposed rule change would not cover funding portals. According to FINRA, given its limited regulatory experience with funding portals, it is not clear that funding portals present the corresponding risks that FINRA is seeking to address with respect to broker-dealers. *See* Notice at 78550 note 46. Moreover, developing relevant metrics and thresholds for funding portals would require a separate effort and analysis because, unlike broker-dealers, the Uniform Registration Forms do not apply to funding portals and their associated persons. Accordingly, FINRA is proposing to amend Funding Portal Rule 900(a) (Application of FINRA Rule 9000 Series (Code of Procedure) to Funding Portals), to clarify that funding portals would not be subject to proposed FINRA Rule 9561. *See* Notice at 78550 note 46.

[16] *See* Notice at 78542.

[17] *Id.* at 78540.

[18] *Id.* at 78550.

[19] *Id.* at 78550–51.

[20] *See* Notice at 78540 note 5 (In particular, FINRA cited to Hammad Qureshi & Jonathan Sokobin, Do Investors Have Valuable Information About Brokers? (OCE Working Paper, Aug. 2015) (a study showing that past disclosure events, including regulatory actions, customer arbitrations and litigations of registered representatives, have significant power to predict future investor harm) and Mark Egan, Gregor Matvos & Amit Seru, The Market for Financial Adviser Misconduct, J. Pol. Econ. 127, no. 1 (Feb. 2019), 233–295 (presenting evidence suggesting a higher rate of new disciplinary and other disclosure events is highly correlated with past disciplinary and other disclosure events that occurred in the previous nine years)).

[21] *Id.* at 78540.

[22] *Id.* at 78540–41.

[23] *Id.* at 78541.

[24] *Id.*

[25] *Id.*

[26] *Id.*

FINRA observed that such firms and their associated persons often have substantial numbers of reportable events on their Uniform Registration Forms.[27] In such situations, FINRA closely examines the firms' and registered representatives' conduct, and where appropriate, FINRA will bring enforcement actions to bar or suspend the firms and individuals involved.[28]

However, FINRA states that individuals and firms with a history of misconduct can pose a particular challenge for FINRA's existing examination and enforcement programs.[29] Specifically, examinations can identify compliance failures—or imminent failures—and prescribe remedies to be taken, but examiners are not empowered to require a firm to change or limit its business operations in a particular manner without an enforcement action.[30] While these constraints on the examination process protect firms from potentially arbitrary or overly onerous examination findings, an individual or firm with a history of misconduct can take advantage of these limits to continue activities that pose risk of harm to investors until they result in an enforcement action.[31]

FINRA states that enforcement actions in turn can only be brought after a rule has been violated and any resulting customer harm has already occurred.[32] In addition, these proceedings can take significant time to develop, prosecute and conclude, during which time the individual or firm is able to continue misconduct, with significant risks of additional harm to investors.[33] Parties with serious compliance issues often will litigate enforcement actions brought by FINRA, which may involve a hearing and multiple rounds of appeals, forestalling the imposition of disciplinary sanctions for an extended period.[34] For example, an enforcement proceeding could involve a hearing before a Hearing Panel, numerous motions, an appeal to the National Adjudicatory Council (''NAC''), and a further appeal to the Commission.[35] Moreover, even when a FINRA Hearing Panel imposes a significant sanction, the sanction is stayed during appeal to the NAC.[36] Many sanctions are also automatically stayed on appeal to the Commission, and can be stayed during an appeal to the courts.[37] And when all appeals are exhausted, the firm may have withdrawn its FINRA membership and shifted its business to another member or other type of financial firm, limiting FINRA's jurisdiction and avoiding the sanction, including making restitution to customers.[38] In such circumstances, the firm may also fail to pay arbitration awards owed to claimants, leaving investors uncompensated and diminishing confidence in the securities markets.[39]

Proposed Rule 4111 (Restricted Firm Obligations)

Proposed Rule 4111 would establish numeric thresholds based on firm-level and individual-level disclosure events to identify member firms with a significantly higher level of risk-related disclosures as compared to similarly sized peers.[40] Following a multi-step process of evaluating a member firm, FINRA's Department of Member Regulation (''Department'') would be permitted to impose on member firms it determines pose a high risk to the investing public (*i.e.,* a ''Restricted Firm'') a ''Restricted Deposit Requirement,'' [41] conditions or restrictions on the member firm's operations that are necessary or appropriate to protect investors and the public interest, or both.[42]

According to FINRA, the proposed multi-step process includes features that narrowly focus the proposed obligations on the firms of most concern.[43] FINRA describes this process as a ''funnel.'' [44] The top of the funnel applies to the range of member firms with the most disclosures, with a narrowing in the middle of the potential member firms that may be subject to additional obligations, and the bottom of the funnel reflecting the smaller number of member firms that FINRA determines present high risks to the investing public.[45]

FINRA would conduct the process annually for each member firm, determining whether it should be designated (or re-designated) as a Restricted Firm and whether any such Restricted Firm should be subject to any obligations.[46] Each member firm that is preliminarily identified based on its firm-level and individual-level disclosure events would have several ways to affect outcomes during subsequent steps in the evaluative process, including a one-time opportunity to terminate registered representatives with relevant disclosure events so as to no longer trigger the numeric thresholds.[47] The member firm would also be able to explain to the Department why it should not be subject to a Restricted Deposit Requirement, or propose alternatives that would still accomplish FINRA's goal of protecting investors, and could request a hearing before a FINRA Hearing Officer in an expedited proceeding to challenge a Department determination.[48]

The rule would subject the Department to certain presumptions when it assesses a previously designated Restricted Firm's application for withdrawal from its Restricted Deposit Account.[49] Specifically, the Department would be required to: (1) Deny an application for withdrawal if the member firm, the member firm's associated persons who are owners or control persons, or the former member firm have any Covered Pending Arbitration Claims [50] or unpaid arbitration awards, or if the member firm's associated persons have any Covered Pending Arbitration Claims or unpaid arbitration awards relating to arbitrations that involved conduct or alleged conduct that occurred while the person was associated with the member firm; but (2) approve the application of a Former Member [51] when that Former

[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] *Id.*
[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] *Id.*
[38] *Id.* FINRA also states that temporary cease and desist proceedings can, but do not always, provide an effective remedy for potential ongoing harm to investors during the enforcement process. FINRA explains that it does not always permit rapid intervention because FINRA must be prepared to file the underlying disciplinary complaint at the same time it seeks a cease and desist order. *See* Notice at 78541. Moreover, temporary cease and desist proceedings are available only in narrowly defined circumstances. *See* FINRA Rule 9800 Series (Temporary and Permanent Cease and Desist Orders).
[39] *See* Notice at 78541.
[40] *Id.*
[41] *See* proposed Rule 4111(i)(15) (defining ''Restricted Deposit Requirement'').
[42] *See* Notice at 78542.
[43] *Id.*
[44] *Id.*
[45] *See* Exhibit 2d to the text of FINRA's proposed rule change for a diagram of the ''funnel,'' available at *https://www.finra.org/sites/default/files/2020-11/SR-FINRA-2020-041.pdf* at p. 553.
[46] *See* Notice at 78542.
[47] *Id.*
[48] *Id.*
[49] *See* proposed Rule 4111(i)(14) (defining ''Restricted Deposit Account'').
[50] *See* proposed Rule 4111(i)(2) (defining Covered Pending Arbitration Claim as an investment-related, consumer-initiated claim filed against the member or its associated persons in any arbitration forum that is unresolved; and whose claim amount (individually or, if there is more than one claim, in the aggregate) exceeds the member's excess net capital).
[51] *See* proposed Rule 4111(i)(7) would define ''Former Member'' as an entity that has withdrawn or resigned its FINRA membership, or that has had

Continued

Member commits in the manner specified by the Department to use the amount it withdraws to pay down its specified unpaid arbitration awards.[52]

General (Proposed Rule 4111(a))

Under the proposal, any member firm that is designated by the Department as a Restricted Firm would be required to establish a Restricted Deposit Account[53] and deposit cash or qualified securities with an aggregate value that is not less than the member firm's Restricted Deposit Requirement, except in certain identified situations.[54] Restricted Firms could also be subject to conditions or restrictions on their operations,[55] as determined by the Department to be necessary or appropriate to protect investors and the public interest in addition or in the alternative to a Restricted Deposit Requirement.[56]

Annual Calculation by FINRA of the Preliminary Criteria for Identification (Proposed Rule 4111(b))

FINRA will announce for all member firms the date of the first annual evaluation (''Evaluation Date'') no less than 120 calendar days prior to the first Evaluation Date.[57] Subsequent Evaluation Dates would be on the same month and day each year, whether that date certain falls on a business day, a weekend day, or a holiday.[58]

The Department would begin each member firm's annual Rule 4111 review process by calculating specified ''Preliminary Identification Metrics'' for each firm for each of six categories of events or conditions, collectively defined as the ''Disclosure Event and Expelled Firm Association Categories.'' [59] FINRA would use a formula to identify whether a firm has exceeded certain established thresholds,[60] based on the firm's size,[61] for each of these six categories of events or conditions.[62] The six categories are: (1) Registered Person Adjudicated Events; [63] (2) Registered Person Pending Events; [64] (3) Registered Person Termination and Internal Review Events; [65] (4) Member Firm Adjudicated Events; [66] (5) Member Firm Pending

its membership cancelled or revoked. However, proposed rule 9561.01 would include former members as members for purposes of the proposed rule changes. To the extent a Restricted Member withdraws its membership applications with specified unpaid arbitration awards, the conditions for releasing funds from the restricted deposit would encourage the firm to use the released funds to pay those awards. *See also* Notice at 78542.

[52] *See* Notice at 78547.

[53] *See* proposed Rule 4111(i)(14) (defining ''Restricted Deposit Account''). Proposed Rule 4111(i)(14) would require that any Restricted Deposit Account be in the name of the member firm at a bank or at the member firm's clearing firm. The account would need to be subject to an agreement in which the bank or the clearing firm agrees: Not to permit withdrawals from the account absent FINRA's prior written consent; to keep the account separate from any other accounts maintained by the member firm with the bank or clearing firm; that the cash or qualified securities on deposit will not be used directly or indirectly as security for a loan to the member firm by the bank or the clearing firm, and will not be subject to any set-off, right, charge, security interest, lien, or claim of any kind in favor of the bank, clearing firm or any person claiming through the bank or clearing firm; that if the member firm becomes a Former Member, the assets deposited in the Restricted Deposit Account to satisfy the Restricted Deposit Requirement shall be kept in the Restricted Deposit Account, and withdrawals will not be permitted without FINRA's prior written consent; that FINRA is a third-party beneficiary to the agreement; and that the agreement may not be amended without FINRA's prior written consent. In addition, the account could not be subject to any right, charge, security interest, lien, or claim of any kind granted by the member. *See* Notice at 78547–8. In the event of a liquidation of a Restricted Firm, funds or securities on deposit in the Restricted Deposit Account would be additional financial resources available for the Restricted Firm's trustee to distribute to those with claims against the Restricted Firm. However, such funds and securities on deposit in the Restricted Deposit Account would not be held with respect to any particular claim, or class of claimants, against such firm. *See* Notice at 78548 note 39.

[54] *See* Notice at 78542.

[55] FINRA has also proposed adopting Supplementary Material .03 to proposed Rule 4111 to provide member firms with a non-exhaustive list of examples of conditions and restrictions that the Department could impose on Restricted Firms. *See* Notice at 78458.

[56] *Id.*

[57] *Id.*

[58] *See* FINRA March 4 Letter at 5–6.

[59] *See* proposed Rule 4111(i)(4) (defining ''Disclosure Event and Expelled Firm Association Categories''). The Disclosure Event and Expelled Firm Association Categories are all based on events or conditions disclosed through the Uniform Registration Forms with the exception of one event category (Member Firm Adjudicated Events), which includes events that are derived from customer arbitrations filed with FINRA's dispute resolution forum. *See* Notice at 78542 note 17.

[60] *See* proposed Rule 4111(i)(11) (defining ''Preliminary Identification Metrics Thresholds'').

[61] Specifically, member firms will be divided into seven size categories, ranging from firms with 1–4 Registered Persons In-Scope to 500 or more Registered Persons In-Scope. *See* Notice at 78544. The term ''Registered Persons In-Scope'' means all persons registered with the firm for one or more days within the one year prior to the Evaluation Date. *See* proposed Rule 4111(i)(13).

[62] *See* Notice at 78543. As detailed further below, in each of these six categories, FINRA would identify all of the firm's events or conditions within that category. The total number of these events or conditions in each category will then be divided by the number of Registered Persons In-Scope to identify the per capita number of events or conditions that the firm has, to enable comparison against similarly sized firms. This per capita number of events or conditions in each category will then be used to determine whether or not the firm has met or exceeded the threshold for that category, as set out below. *Id.*

[63] ''Registered Person Adjudicated Events,'' defined in proposed Rule 4111(i)(4)(A), means any one of the following events that are reportable on the registered person's Uniform Registration Forms: (1) A final investment-related, consumer-initiated customer arbitration award or civil judgment against the registered person in which the registered person was a named party, or was a subject of the customer arbitration award or civil judgment; (2) a final investment-related, consumer-initiated customer arbitration settlement, civil litigation settlement or a settlement prior to a customer arbitration or civil litigation for a dollar amount at or above $15,000 in which the registered person was a named party or was a subject of the customer arbitration settlement, civil litigation settlement or a settlement prior to a customer arbitration or civil litigation; (3) a final investment-related civil judicial matter that resulted in a finding, sanction or order; (4) a final regulatory action that resulted in a finding, sanction or order, and was brought by the Commission or Commodity Futures Trading Commission (''CFTC''), other federal regulatory agency, a state regulatory agency, a foreign financial regulatory authority, or a self-regulatory organization; or (5) a criminal matter in which the registered person was convicted of or pled guilty or nolo contendere (no contest) in a domestic, foreign, or military court to any felony or any reportable misdemeanor.

[64] ''Registered Person Pending Events,'' defined in proposed Rule 4111(i)(4)(B), means any one of the following events associated with the registered person that are reportable on the registered person's Uniform Registration Forms: (1) A pending investment-related civil judicial matter; (2) a pending investigation by a regulatory authority; (3) a pending regulatory action that was brought by the Commission or CFTC, other federal regulatory agency, a state regulatory agency, a foreign financial regulatory authority, or a self-regulatory organization; or (4) a pending criminal charge associated with any felony or any reportable misdemeanor. Registered Person Pending Events does not include pending arbitrations, pending civil litigations, or consumer-initiated complaints that are reportable on the registered person's Uniform Registration Forms.

[65] ''Registered Person Termination and Internal Review Events,'' defined in proposed Rule 4111(i)(4)(C), means any one of the following events associated with the registered person at a previous member firm that are reportable on the registered person's Uniform Registration Forms: (1) A termination in which the registered person voluntarily resigned, was discharged or was permitted to resign from a previous member after allegations; or (2) a pending or closed internal review by a previous member. FINRA has revised this definition, from the version proposed in Regulatory Notice 19–17 (May 2019), to clarify that termination and internal review disclosures concerning a person whom a member firm terminated would not impact that member firm's own Registered Person Termination and Internal Review Metric; rather, they would only impact the metrics of member firms that subsequently register the terminated individual.

[66] ''Member Firm Adjudicated Events,'' defined in proposed Rule 4111(i)(4)(D), means any one of the following events that are reportable on the member firm's Uniform Registration Forms or based on customer arbitrations filed with FINRA's dispute resolution forum: (1) A final investment-related, consumer-initiated customer arbitration award in which the member was a named party; (2) a final investment-related civil judicial matter that resulted in a finding, sanction or order; (3) a final regulatory action that resulted in a finding, sanction or order, and was brought by the Commission or CFTC, other federal regulatory agency, a state regulatory agency, a foreign financial regulatory authority, or a self-regulatory organization; or (4) a criminal matter in which the member was convicted of or pled guilty or nolo contendere (no contest) in a domestic, foreign, or military court to any felony or any reportable misdemeanor.

Events; [67] and (6) Registered Persons Associated with Previously Expelled Firms (also referred to as the Expelled Firm Association category).[68] Based on this calculation, the Department would determine whether the particular member firm meets the ''Preliminary Criteria for Identification.'' [69]

Several principles guided FINRA's development of the proposed Preliminary Criteria for Identification and the proposed Preliminary Identification Metrics Thresholds.[70] The criteria and thresholds are intended to be replicable and transparent to FINRA and affected member firms; employ the most complete and accurate data available to FINRA; be objective; account for different firm sizes and business profiles; and target the sales practice concerns that arise when firms appear to systemically perpetuate harm on investors leading up to and at the point-of-sale of securities products, that are motivating the proposal.[71] These criteria are intended to identify member firms that present a high risk but avoid imposing obligations on member firms whose risk profile and activities do not warrant such obligations.[72]

To calculate each of the six categories' Preliminary Identification Metrics, FINRA would first add the number of pertinent disclosure events.[73] To calculate the Expelled Firm Association category, FINRA would count the number of Registered Persons Associated with Previously Expelled Firms.[74] For purposes of these calculations: (1) Adjudicated disclosure events would include only those that were resolved during the prior five years from the date of the calculation; (2) pending events and pending internal reviews would include disclosure events that are pending as of the date of the calculation; and (3) Registered Person disclosure events (*i.e.,* disclosure events of all persons registered with the member firm for one or more days within the one year prior to the calculation date, that is, Registered Persons In-Scope).[75] The sum for each of the six categories would then be run through a standardization process to determine the member's six Preliminary Identification Metrics, wherein the raw numbers of a firm's relevant events in each category would be divided by the number of Registered Persons In-Scope at the firm, to enable more accurate, per person comparisons with other member firms.[76]

A firm's six Preliminary Identification Metrics would be used to determine if the member firm meets the Preliminary Criteria for Identification. FINRA believes that the Preliminary Identification Metrics Thresholds in proposed Rule 4111(i)(11) represent member firms that present significantly higher risk than a large percentage of their similarly sized peers for the type of events in the category. There are numeric thresholds for seven different firm sizes, to provide that each member firm would be compared only to its similarly sized peers.[77]

To meet the Preliminary Criteria for Identification, a member firm would need to meet: (1) Two or more of the Preliminary Identification Metrics Thresholds set forth in proposed Rule 4111(i)(11), at least one of which must be the Registered Person Adjudicated Event Metric, the Member Firm Adjudicated Event Metric, or the Expelled Firm Association Metric, and (2) two or more Registered Person and Member Firm Events (*i.e.,* two or more events from Categories 1–5 above).[78] If these conditions are met, the member firm would meet the Preliminary Criteria for Identification.[79]

Initial Department Evaluation (Proposed Rule 4111(c)(1))

The Department would then evaluate whether a member firm that has met the Preliminary Criteria for Identification warrants further review under Rule 4111.[80] FINRA's evaluation would include consideration of: Whether non-high-risk disclosure events or other conditions should not have been included within the initial calculation of the firm's Preliminary Identification Metric computations (*e.g.,* events that were not sales-practice related, duplicative events involving the same customer and the same matter, or events involving compliance concerns best addressed by a different regulatory response by FINRA (*e.g.,* enforcement actions; more frequent examination cycles; temporary cease and desist orders)); [81] whether the disclosure events pose risks to investors or market integrity, as opposed to violations of procedural rules; [82] and whether the member firm has already addressed the concerns signaled by the disclosure events or conditions, or has altered its business operations such that the threshold calculation no longer reflects the firm's current risk profile.[83] The Department would then either determine that further review would be necessary and continue the Rule 4111 process, or, if the Department concluded that no further review would be warranted, close out that member firm's Rule 4111 process for the year without imposing any restrictions or obligations.[84]

One-Time Opportunity To Reduce Staffing Levels (Proposed Rule 4111(c)(2))

If the Department determines that a member firm warrants further review under Rule 4111, and such member firm would be meeting the Preliminary Criteria for Identification for the first time, the member firm would have a

[67] ''Member Firm Pending Events,'' defined in proposed Rule 4111(i)(4)(E), means any one of the same kinds of events as the ''Registered Person Pending Events,'' but that are reportable on the member firm's Uniform Registration Forms.

[68] ''Registered Persons Associated with Previously Expelled Firms,'' defined in proposed Rule 4111(i)(4)(F), means any ''Registered Person In-Scope'' who was registered for at least one year with a previously expelled firm and whose registration with the previously expelled firm terminated during the ''Evaluation Period'' (*i.e.,* the prior five years from the ''Evaluation Date,'' which would be the annual date as of which the Department calculates the Preliminary Identification Metrics). See proposed Rule 4111(i)(5), (6), and (13) (proposed definitions of ''Evaluation Date,'' ''Evaluation Period,'' and ''Registered Persons In-Scope''). This proposed definition is narrower than the definition proposed in Regulatory Notice 19–17, which would have captured any registered person registered for one or more days within the year prior to the Evaluation Date with the firm, and who was associated with one or more previously expelled firms at any time in his/her career. Including an Expelled Firm Association Metric in the Preliminary Criteria for Identification is similar to how FINRA Rule 3170 (Tape Recording of Registered Persons by Certain Firms) imposes recording requirements on firms with specific percentages of registered persons who were previously associated with disciplined firms.

[69] *See* proposed Rule 4111(i)(9) (defining ''Preliminary Criteria for Identification'').

[70] *See* Notice at 78542.

[71] *Id.*

[72] *Id.*

[73] *Id.* at 78543.

[74] *Id.*

[75] *See* proposed Rule 4111(i)(13).

[76] *See* Notice at 78543. For the five ''Registered Person and Member Firm Events'' categories (Categories 1–5 above),[76] the proposed standardized Preliminary Identification Metrics would be derived by dividing the sum of events from each category by the number of Registered Persons In-Scope to identify the average number of events per registered representative. For the Expelled Firm Association category (Category 6 above), the proposed Preliminary Identification Metric would be standardized by taking the number of Registered Persons Associated with Previously Expelled Firms and dividing it by the number of Registered Persons In-Scope to determine the percentage of the member firm's registered representatives who meet the Registered Persons Associated with Previously Expelled Firms definition. *See also* proposed Rule 4111(i)(12) (defining ''Registered Person'' and ''Member Firm Events'').

[77] Because FINRA has narrowed the definition of Registered Persons Associated with Previously Expelled Firms from the version that was originally proposed in Regulatory Notice 19–17, FINRA also has revised the Expelled Firm Association Metric Thresholds. *See* Notice at 78544 note 29.

[78] *See* Notice at 78543.

[79] *Id.*

[80] *See* Notice at 78544.

[81] *Id.*

[82] *Id.* at 78544–45.

[83] *Id.* at 78545.

[84] *Id.*

one-time opportunity to reduce its staffing levels to avoid meeting the Preliminary Criteria for Identification, within 30 business days after being informed by the Department that it met the Preliminary Criteria for Identification.[85] The member firm would need to identify the terminated individuals to the Department and would be prohibited from rehiring any of those terminated persons, in any capacity, for one year.[86]

If the member firm reduces its staffing levels, and the Department then determines that the member firm no longer meets the Preliminary Criteria for Identification, the Department would close out the firm's Rule 4111 process for the year without seeking to impose any restrictions or obligations on the firm. However, if the Department determines that the member firm still meets the Preliminary Criteria for Identification (or if the member firm did not opt to reduce staffing levels) the Department would determine the firm's maximum Restricted Deposit Requirement, and the member firm would proceed to a ''Consultation'' with the Department.[87]

Determination of a Maximum Restricted Deposit Requirement (Proposed Rule 4111(i)(15))

For firms still meeting the Preliminary Criteria for Identification, the Department would then determine the firm's maximum Restricted Deposit Requirement,[88] and the member firm would then proceed to a ''Consultation'' with the Department.[89] The Department would seek to tailor a firm's maximum Restricted Deposit Requirement amount to its size, operations and financial conditions, and determine the member firm's maximum Restricted Deposit Requirement consistent with the objectives of the rule, while not significantly undermining the firm's continued financial stability and operational capability as an ongoing enterprise over the next 12 months.[90]

Consultation (Proposed Rule 4111(d))

During the Consultation, the Department would give the member firm an opportunity to demonstrate why it does not meet the Preliminary Criteria for Identification, why it should not be designated as a Restricted Firm, and why it should not be subject to the maximum Restricted Deposit Requirement.[91] A member firm may overcome the presumption that it should be designated as a Restricted Firm by ''clearly demonstrating that the Department's calculation is inaccurate'' because, among other things, it considered events that should not have been included.[92] A member firm also may overcome the presumption that it should be subject to the maximum Restricted Deposit Requirement by clearly demonstrating that such an amount would cause significant undue financial hardship, and that a lesser deposit requirement would satisfy the objectives of Rule 4111; or that other operational conditions and restrictions on the member and its associated persons would sufficiently protect investors and the public interest.[93] To the extent a member firm seeks to claim undue financial hardship, it would bear the burden of supporting that claim with documents and information.[94]

Department Decision and Notice (Proposed Rule 4111(e)); No Stays

After the Consultation, the Department would be required to render a decision, pursuant to one of three paths: (1) If the Department determines that the member firm has rebutted the presumption that it should be designated a Restricted Firm, the Department would not designate the firm as a Restricted Firm that year; (2) if the Department determines that the member firm has not rebutted the presumption that it should be designated as a Restricted Firm, but has rebutted the presumption that it shall be subject to the maximum Restricted Deposit Requirement, the Department would designate the member firm as a Restricted Firm, but would: (a) Either impose no Restricted Deposit Requirement on the member firm, or require it to promptly establish a Restricted Deposit Account, and deposit in that account a lower Restricted Deposit Requirement in such dollar amount as the Department deems necessary or appropriate; and (b) require the member firm to implement and maintain specified conditions or restrictions on the operations and activities of the member firm and its associated persons, as necessary or appropriate, to address the concerns identified by the Department, and protect investors and the public interest; or (3) if the Department determines that the member firm has rebutted neither presumption, the Department would designate the member firm as a Restricted Firm, require it to promptly establish a Restricted Deposit Account, deposit in that account the maximum Restricted Deposit Requirement, and implement and maintain specified conditions or restrictions on the firm's operations and activities, and those of its associated persons, as necessary or appropriate to address the concerns identified by the Department, and protect investors and the public interest.[95] Pursuant to proposed Rule 4111(e)(2), the Department would provide the member firm with written notice of its decision no later than 30 days from the date of FINRA's letter scheduling the Consultation, stating any conditions or restrictions to be imposed, and the ability of the member firm to request a hearing with the Office of Hearing Officers in an expedited proceeding.[96]

Continuation or Termination of Restricted Firm Obligations (Proposed Rule 4111(f))

Proposed Rule 4111(f) would set forth the circumstances under which any obligations (including any Restricted Deposit Requirement, conditions, or

[85] *Id.* at 78544.

[86] *Id.*

[87] *Id.* at 78545.

[88] The term ''maximum'' is used to indicate that a firm's maximum Restricted Deposit Requirement will be the figure FINRA declares to the firm is the highest deposit requirement it may be subject to during that year's Rule 4111 process. As discussed below, firms could then seek to demonstrate to FINRA why a lower deposit requirement would be more appropriate during the Consultation. *See* FINRA March 4 Letter *supra* note 5.

[89] *See* Notice at 78545.

[90] *Id.* The proposed factors that the Department would consider when determining a maximum Restricted Deposit Requirement include revenues, net capital, assets, expenses, and liabilities, the firm's operations and activities, number of registered persons, the nature of the disclosure events included in the numeric thresholds, insurance coverage for customer arbitration awards or settlements concerns raised during FINRA exams, and the amount of any of the firm's or its associated persons' ''Covered Pending Arbitration Claims'' or unpaid arbitration awards. *See* proposed FINRA Rule 4111(i)(15)(A).

[91] *See* Notice at 78545.

[92] *Id.* These would include, for example, events that are duplicative, involving the same customer and the same matter, or are not sales-practice related. *Id.*

[93] *Id.* Proposed Rule 4111(d)(3) provides guidance to member firms on what information the Department would consider during the Consultation, and guidance on how to attempt to overcome the two rebuttable presumptions (that the member firm should be designated as a Restricted Firm, and that it should be subject to the maximum Restricted Deposit Requirement). *See* Notice at 78546.

[94] *See* Notice at 78545.

[95] *See* Notice at 78546.

[96] *Id.* As noted below, any request for a hearing would not stay the effectiveness of the Department's decision, but, unless that firm was already operating as a Restricted Firm based on a prior year's Department decision, it would temporarily lower the necessary Required Deposit Requirement for that member firm until the Office of Hearing Officers, or the NAC issues a final written decision. *See* proposed FINRA Rule 4111(e)(2). If the firm was already operating as a Restricted Firm based on a prior year's Department decision, it would be required to keep in the Restricted Deposit Account the assets then on deposit therein until the Office of Hearing Officers or the NAC issues its final written decision in the expedited proceeding. *Id.*

restrictions) that were imposed during the Rule 4111 process in one year are continued or terminated in that same year and in subsequent years. Pursuant to proposed Rule 4111(f)(1), a currently designated Restricted Firm would not be able to withdraw all or any portion of its Restricted Deposit Requirement, or seek to terminate or modify any Restricted Deposit Requirement, conditions, or restrictions that have been imposed pursuant to this Rule, without the prior written consent of the Department. Restricted Firms would only be permitted to seek to withdraw a portion of its Restricted Deposit Requirement, or terminate or modify any required deposit, conditions, or restrictions that have been imposed, during their annual Consultation, and any ensuing expedited proceedings after a Department decision; no interim termination or modification of any obligations would be permitted.[97]

Where the Department determines in one year that a member firm is a Restricted Firm, but in the following year(s) determines that the member firm or former member firm [98] either does not meet the Preliminary Criteria for Identification or should not be designated as a Restricted Firm, the member firm or former member firm would no longer be subject to any obligations previously imposed under proposed Rule 4111.[99] There would be one exception from this removal of previously imposed obligations in the case of the Restricted Deposit Requirement: A former Restricted Firm would not be permitted to withdraw any portion of its Restricted Deposit Requirement without submitting an application in the manner specified under Rule 4111(f)(3)(A), and obtaining the Department's prior written consent for the withdrawal.[100] The rule would establish presumptions for the Department's approval, or disapproval, of a withdrawal application. Specifically, the Department would approve an application for withdrawal if the member firm, its associated persons, or the former member firm have no Covered Pending Arbitration Claims or unpaid arbitration awards.[101] In addition, the Department would approve an application by a former member for withdrawal if the former member commits in the manner specified by the Department to use the amount it seeks to withdraw from its Restricted Deposit to pay the former member's specified unpaid arbitration awards.[102] By contrast, the Department would deny an application for withdrawal if: (1) The member firm, the member firm's associated persons who are owners or control persons, or the former member have any Covered Pending Arbitration Claims or unpaid arbitration awards, or (2) any of the member's associated persons have any Covered Pending Arbitration Claims or unpaid arbitration awards relating to arbitrations that involved conduct or alleged conduct that occurred while associated with the member.[103]

Books and Records (Proposed Rule 4111(g))

Member firms would also be obligated to maintain books and records that evidence their compliance with Rule 4111 and any Restricted Deposit Requirement or other conditions or restrictions imposed under that rule, which the member firm would also need to provide to the Department upon request.[104]

Proposed Rule 9561 (Procedures for Regulating Activities Under Rule 4111) and Amendments to Rule 9559 To Implement the Requirements of Proposed Rule 4111

Rule 9561 would establish new expedited proceedings that would: (1) Provide an opportunity to challenge any requirements the Department has imposed, including any Restricted Deposit Requirements, by requesting a prompt review of the Department's decision in the Rule 4111 process; [105] and (2) address a member firm's failure to comply with any requirements imposed under Rule 4111.[106]

Notices Under Proposed Rule 4111 (Proposed Rule 9561(a))

Under new Rule 9561(a)(1), the Department would serve to the member firm a notice of the Department's decision following the Rule 4111 process that: (1) Provides the specific grounds and factual basis for the Department's action; (2) states when the action would take effect; (3) informs the member firm that it may, within seven days after service of the notice, request a hearing in an expedited proceeding; and (4) explains the Hearing Officer's authority.[107] The proposed rule change would also provide that, if a member firm does not request a hearing, the decision would constitute final FINRA action.[108]

In general, a request for a hearing would not stay any of the Rule 4111 Requirements imposed in the Department's decision, which would be immediately effective.[109] There is one exception: When a member firm requests review of a Department determination to impose a Restricted Deposit Requirement on the member, the firm would be required to deposit the lesser of 25% of its Restricted Deposit Requirement or 25% of its average excess net capital over the prior year, while the expedited proceeding is pending.[110] This exception would not be available for a member firm that has been re-designated as a Restricted Firm, and is already subject to a previously imposed Restricted Deposit Requirement, which it would need to keep the assets on deposit in the Restricted Deposit account until the Office of Hearing Officers or NAC issues a written decision.[111]

Notice for Failure To Comply With the Proposed Rule 4111 Requirements (Proposed Rule 9561(b))

If a member firm fails to comply with any of the requirements imposed on it under Rule 4111, the Department would be authorized to serve a notice pursuant to proposed Rule 9561 stating that the member firm's continued failure to

[97] *See* Notice at 78547. FINRA has indicated that there will be a presumption that the Department shall deny an application by a member firm or former member firm that is currently designated as a Restricted Firm to withdraw all or any portion of its Restricted Deposit Requirement.; *see also* FINRA proposed Rule 4111(f)(3).

[98] *See* Notice at 78547; *see also* definition of ''Former Member'' in proposed Rule 4111(i)(7).

[99] *See* Notice at 78547.

[100] *Id.* Proposed Rule 4111(f)(3) would require a member's application requesting permission to withdraw any portion of its Restricted Deposit Requirement to include, among other things: (1) Evidence that there are no Covered Pending Arbitration Claims, unpaid arbitration awards or unpaid settlements relating to arbitrations outstanding against the member, the member's Associated Persons or the Former Member, or (2) a detailed description of any existing Covered Pending Arbitration Claims, unpaid arbitration awards or unpaid settlements relating to arbitrations outstanding. The Department would be required to issue a notice of its decision within 30 days from the date it receives the relevant application.; *see also* FINRA proposed Rule 9561.

[101] *See* Notice at 78547.

[102] *Id.; see also* proposed Rule 4111(f)(3) provides that the Covered Pending Arbitration Claims and unpaid arbitration awards of a member firm's associated persons are pertinent to an application for a withdrawal from the Restricted Deposit Requirement. In particular, the conditions for releasing funds from the restricted deposit include the former member having no specified unpaid arbitration awards. *See supra* note 51 and accompanying text.

[103] *See* Notice at 78547; *see also* FINRA proposed Rule 4111(f)(3)(B).

[104] *See* Notice at 78547.

[105] Proposed Rule 9561(a)(1) would define the ''Rule 4111 Requirements'' to mean the requirements, conditions, or restrictions imposed by a Department determination under proposed Rule 4111. *See* Notice at 78548.

[106] *See* Notice at 78549.

[107] *Id.*

[108] *Id.* at 78548–49.

[109] *Id.* at 78549.

[110] *Id.*

[111] *See* FINRA Rule 4111(e)(2), as modified by Amendment No. 2.

comply within seven days of service of the notice would result in a suspension or cancellation of membership.[112] The notice would need to: (1) Identify the requirements with which the member firm is alleged to have not complied; (2) specify the facts involved in the alleged failure; state when the action will take effect; (3) explain what the member firm would be required to do to avoid the suspension or cancellation; (4) inform the member firm that it may file a request for a hearing in an expedited proceeding within seven days after service of the notice under Rule 9559; and (5) explain the Hearing Officer's authority.[113] If a member firm does not request a hearing, the suspension or cancellation would become effective seven days after service of the notice.[114]

Hearings (Proposed Amendments to the Hearing Procedures Rule)

If a member firm requests a hearing under proposed Rule 9561, the hearing would be subject to Rule 9559 (Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series). FINRA is also adopting several amendments to Rule 9559 specific to hearings requested pursuant to new Rule 9561.[115]

Effective Date

The effective date will be 180 days after the Regulatory Notice announcing this Commission approval.[116]

[112] *See* FINRA Rule 4111(b)(1)–(2).

[113] *See* FINRA Rule 4111(b)(3).

[114] *See* FINRA Rule 4111(b)(6). After a suspension has been imposed, a member firm may file a request under Rule 9561(b) to terminate the suspension on the ground of full compliance with the notice or decision, and the head of the Department will be permitted to grant relief for good cause shown. *See* Notice at 78549.

[115] *See* Notice at 78549. Specifically, FINRA is: (1) Amending Rule 9559(d) and (n) to establish the authority of a Hearing Officer in expedited proceedings under Rule 9561; (2) amending Rule 9559(f) to set out timing requirements for hearings conducted under Rule 9561(a) and (b); and (3) amending Rule 9559(p)(6) to account for the obligations that may be imposed under new Rule 4111 within the content requirements of any decision issued by a Hearing Officer under the Rule 9550 Series. *See* amended Rules 9559(d), (f), (n), and (p)(6). Additionally, during expedited proceedings conducted under new Rule 9561(a) to review a Department determination under proposed Rule 4111, a member firm would be permitted to seek to demonstrate that the Department incorrectly included disclosure events when calculating whether the member firm meets the Preliminary Criteria for Identification. However, the member firm would not be permitted to argue the underlying merits of the final actions underlying the disclosure events. *See* Notice at 78550.

[116] *See* FINRA March 4 Letter at 4. FINRA set a 180-day timeline for the effective date based on comments requesting that FINRA provide additional resources to facilitate member firms' compliance with proposed Rule 4111. FINRA stated, however, that while it intends to develop and provide additional tools to member firms, such tools may not be determinative, because ''whether a member firm will meet the Preliminary Criteria for Identification could only be definitely established as of the annual Evaluation Date.'' *Id.*

III. Discussion and Commission Findings

After careful review of the proposed rule change, as modified by Amendment No. 1 and Amendment No. 2, the comment letters, and FINRA's responses to the comments, the Commission finds that the proposed rule change, as modified by Amendment No. 1 and Amendment No. 2, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities association.[117] Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act, 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.[118]

Proposed Rule 4111 (Restricted Firm Obligations)

The proposal to establish a process in new Rule 4111 to identify member firms that present a high degree of risk to the investing public, based on numeric thresholds of firm-level and individual-level disclosure events, and then impose a Restricted Deposit Requirement, conditions or restrictions on the member firm's operations, or both, will help protect investors and encourage such member firms to change their behavior. FINRA has designed the proposed rule change to establish an annual, multi-step process to determine whether a member firm raises investor protection concerns substantial enough to require the imposition of additional obligations,[119] while allowing identified firms several means of challenging FINRA's decisions and affecting the ultimate outcome.[120] The annual review process, and the ability to impose added obligations on firms presenting a significantly higher degree of risk to investors, should encourage firms to alter their behavior, ultimately to the benefit and protection of investors.

One commenter expressed general support for the proposal, without calling for any amendments.[121] Three commenters expressed general support for the proposal, while also suggesting changes to the proposal to ease firms' compliance burdens, and to help achieve the intended purpose of both incentivizing improved behavior from member firms and better protecting investors.[122] Finally, three other commenters expressed general opposition to the proposal.[123]

Disclosure of Restricted Firms

Three commenters advocated for some form of public disclosure of Restricted Firms identified by FINRA during the Rule 4111 process.[124] Two of those commenters expressed concerns that withholding publication of this information would limit investors'

[117] 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).

[118] 15 U.S.C. 78o–3(b)(6).

[119] FINRA believes that the proposal contains numerous steps that are objective and do not involve the use of discretion or that limit or focus FINRA's discretion. For example, the annual calculation that identifies member firms that are subject to the proposed rule would use objective, transparent criteria to identify outlier firms with the most significant history of misconduct relative to their peers. *See* Notice at 78559.

[120] For example, during the Consultation, the Department would evaluate whether the member firm has demonstrated that the annual calculation included disclosure events that should not have been included (because they are duplicative or not sales-practice related). *Id.*

[121] *See* Letter from Ruben Huertero, Legal Intern, and Christine Lazaro, Director of the Securities Arbitration Clinic and Professor of Clinical Legal Education, St. John's University School of Law, dated December 28, 2020 (The Clinic indicating its support for the adoption of Rule 4111 requiring member firms with a high degree of risk towards the investing public to be subject to a deposit from which withdrawals would be restricted).

[122] *See* Letter from Kevin M. Carroll, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated December 28, 2020 (''SIFMA Letter'') (SIFMA was supportive of the proposal ''to the extent it has the ancillary effect of incentivizing firms and their associated persons to comply with their regulatory obligations and to pay their arbitration awards.''); Letter from David P. Meyer, President, Public Investors Advocate Bar Association, dated December 28, 2020 (''PIABA Letter'') (PIABA indicated it supports the proposal ''in general'' and is ''a firm supporter of FINRA's efforts to enhance its programs to address the risks posed to investors by individual brokers and member firms that have a history of misconduct.''); letter from Lisa Hopkins, President, General Counsel and Senior Deputy Commissioner of Securities, West Virginia, North American Securities Administrators Association, Inc., dated December 28, 2020 (''NASAA Letter'') (NASAA ''commends the Commission and FINRA for expanding controls over high-risk firms'' and indicated the proposal has the potential to ''better protect investors from high-risk firms, which is a goal that NASAA supports.'').

[123] *See* Letter from Lev Bagramian, Senior Securities Policy Advisor, and Michael J, Hughes, Program & Research Assistant, Better Markets, dated December 28, 2020 (''Better Markets Letter'') (Better Markets indicated that the proposal is ''better than doing nothing, [but] it is nonetheless grossly insufficient.''); Letter from Andrew R. Harvin, Doyle, Restrepo, Harvin & Robbins, L.L.P., dated December 21, 2020 (''Harvin Letter'') (Harvin indicated that the proposal is a ''rule proposal looking for a problem.''); Letter from Richard J. Carlesco Jr., CEO, IBN Financial Services, Inc., dated December 15, 2020 (''IBN Letter'') (IBN indicated that the proposal is just one of a ''throng of new regulations that are burying small firms.'').

[124] *See* PIABA Letter; Better Markets Letter; and NASAA Letter.

ability to make informed decisions when selecting a brokerage firm.[125] One argued that ''at a minimum, FINRA must prominently publicize the names of the firms that have been twice-designated as high-risk'' and those of newly formed firms where at least 20% of the associated persons were affiliated previously with twice-designated high-risk firms.[126] One commenter also criticized the lack of required disclosure on Form BD or Form CRS, noting that firms are unlikely to make such disclosures voluntarily.[127] The other commenter asserted that, ''at a minimum, the names of Restricted Firms should be provided to state securities regulators'' to assist such authorities with regulatory oversight and risk analyses of the firms.[128] This commenter stated that the lack of disclosure to state securities regulators was particularly concerning, because it could ''skew an examiner's review of the firm's compliance with net capital requirements due to the restricted funds not being readily available to meet creditor's calls or liquidity requirements.'' [129]

In its initial response, FINRA pointed out that the purpose of proposed Rule 4111 is to address the risks posed by Restricted Firms through appropriate operational restrictions, while giving them opportunities and an incentive to remedy those risks, but that it intends to explore how it can appropriately share identified risks presented by certain firms with both the public and state securities regulators, while remaining consistent with the purpose of proposed Rule 4111.[130] FINRA stated that the proposed rule change is designed to incentivize members that pose outlier-level risks, when compared to all similarly sized firms by headcount, to change behavior and could have an ancillary benefits for addressing unpaid arbitration awards.[131] FINRA expressed concern that publicly disclosing a firm's Restricted Firm status may potentially interfere with those purposes.[132] However, FINRA recognized the potential value to investors of public disclosure of a member's status as a Restricted Firm and intends to consider employing it and other approaches during its planned review of Rule 4111 after it has gained ''sufficient experience with the rule.'' [133]

In further consideration of the matter, FINRA filed a second response to comments, wherein it indicated that the FINRA Board of Governors has authorized the filing of proposed amendments to Rule 8312 (FINRA BrokerCheck Disclosure) that would require FINRA to identify on BrokerCheck those member firms or former member firms that are designated as Restricted Firms pursuant to proposed Rules 4111 and 9561.[134] FINRA indicated that public disclosure on BrokerCheck of those firms that it designates as a Restricted Firm should ''help investors make informed choices about the member firms with which they do business.'' [135] FINRA stated that if the Commission approves the proposed rule change, FINRA would promptly thereafter file with the Commission the proposed amendments to Rule 8312.[136] Additionally, FINRA committed to working with individual state securities regulators to share relevant information concerning whether firms that operate within their jurisdictions have been designated as Restricted Firms, along with information pertaining to the obligations that it has imposed on such firms pursuant to proposed Rules 4111 and 9561.[137]

The Commission finds that the incentives it provides to encourage firms' remediation of high-risk behaviors would be an important step in furtherance of the protection of investors from broker-dealers with risk profiles indicative of potential future harm. The Commission finds that the proposed rule change is reasonable and is designed to enhance investor protection by incentivizing broker-dealers and brokers that pose higher risks to investors to change their behavior. For these reasons, the Commission finds the proposed rule change as presented is consistent with Section 15A(b)(6) of the Act in that it is in the public interest. The Commission further supports FINRA's commitment to working with individual state securities regulators to share relevant information and observes its commitment to further consider public disclosure of a firm's designation as a Restricted Firm by filing proposed amendments to Rule 8312 that would require FINRA to identify on BrokerCheck those member firms or former member firms that are designated as Restricted Firms pursuant to proposed Rules 4111 and 9561.

Resources To Assist Member Firms With Compliance

Two commenters advocated for greater clarity on how firms can independently replicate FINRA's calculation of the Preliminary Identification Metrics, due to the burdens firms may face in complying with proposed Rule 4111.[138] One suggested that FINRA commit to: (1) Providing resources that ''map the Disclosure Event and Expelled Firm Association Categories to the relevant questions on Uniform Registration Forms''; (2) giving firms a worksheet to track their status based on disclosure events and previous firm associations of their Registered Persons In-Scope; and (3) providing firms with a list of all expelled firms.[139] The other commenter suggested FINRA should advise each member firm ''in writing annually what its six Preliminary Identification Metrics are,'' and pointed out that without further assistance from FINRA, firms would need to review each of their registered representative's BrokerCheck reports to track the Registered Persons Associated With Previously Expelled Firms metric.[140] FINRA indicated that it appreciates the potential compliance burdens, and understands the need and expressed its commitment to provide more guidance and resources.[141] Further, FINRA indicated it will explore the feasibility of providing each member firm with notice of its status with respect to the Preliminary Criteria for Identification, including whether such notice would be useful for firms if calculated at any point other than on their annual Evaluation Date.[142] As noted above, due to these concerns and the need to develop resources to assist firms with compliance, FINRA has extended the effective date for the proposed rule change to no later than 180 days after publication of a

[125] *See* PIABA Letter at 3–4; Better Markets Letter at 17–18.

[126] *See* Better Markets Letter at 18. The Commission finds that this suggestion is also beyond the scope of the proposed rule change.

[127] *See* NASAA Letter at 5.

[128] *Id.* at 4.

[129] *Id.*

[130] *See* FINRA March 4 Letter at 16–17 (listing the one-time staff reduction as an example of a means to get removed from the Restricted Firms list).

[131] *Id.* at 12.

[132] *Id.* at 16.

[133] *Id.* at 17. FINRA believes that information about a firm's status as a Restricted Firm, and any restricted deposit it is subject to, could become publicly available through existing sources or processes, such as through Form BD, Form CRS, or financial statements, or when a Hearing Officer's decision in an expedited proceeding is published pursuant to FINRA's publicity rule. *See* Notice at 78567 note 159.

[134] *See* FINRA July 20 Letter.

[135] *Id.* at 3.

[136] *See* FINRA July 20 Letter.

[137] *Id.*

[138] *See* SIFMA Letter; Harvin Letter.

[139] *See* SIFMA Letter at 2.

[140] *See* Harvin Letter at 1–3.

[141] *See* FINRA March 4 Letter at 4.

[142] *Id.*

Regulatory Notice announcing this Commission approval.[143]

Providing firms with increased clarity as to how the Preliminary Identification Metrics apply to their own situation would further assist in FINRA's goal to incentivize better behaviors from firms. The Commission thus supports FINRA's decision to extend the effective date of proposed Rule 4111 to develop certain compliance tools, and would encourage FINRA to provide resources and guidance for firms as is feasible.

Preliminary Criteria for Identification

Three commenters expressed various concerns regarding the scope of events included in the proposed Preliminary Criteria for Identification.[144]

One commenter urged FINRA to amend the Preliminary Identification Metrics to use ''more stringent criteria in identifying high risk firms,'' including (1) expanding the look-back review period for disclosure events from five to ten years; (2) decreasing the settlement size threshold for investment-related, consumer-initiated customer arbitration awards and civil judgments from $15,000 to $5,000; and (3) expanding the scope of disclosure events to cover events that are harmful to investors, even where not consumer-initiated.[145]

FINRA responded that it already considered these alternative definitions and criteria among many others. For instance, FINRA stated that it considered whether adjudicated events should be counted over the individual's or firm's entire reporting period or counted over a more recent period. Based on its experience, FINRA believes that more recent events (*i.e.,* events occurring in the last five years) generally pose a higher level of possible future risk to customers than other events. Further, FINRA believes that counting events over an individual's or firm's entire reporting period would imply that associated persons and firms would always be included in the Preliminary Identification Metrics for adjudicated events, even if they subsequently worked without being associated with any future adjudicated events.[146]

Similarly, FINRA's use of the $15,000 settlement threshold is consistent with its approach in the High Risk Broker Approval Order. In that filing, FINRA established metrics based, in part, on complaints that led to an award against a broker or settled above a de minimis threshold of $15,000 because it wanted to ''focus its analysis on outcomes that are more likely associated with material customer harm.'' [147] FINRA also stated that the $15,000 mark represents the current CRD settlement threshold for reporting customer complaints on Uniform Registration Forms.[148] Thus, by lowering the threshold to $5,000, FINRA ''would not have useful information . . . from which to make its objective analysis,'' because the additional events that would be captured by this change from the proposed rule would not be reportable.[149]

Finally, FINRA also disputed the assessment that the proposed rule is ''limited to only events that are 'consumer-initiated,' '' as disclosure events are only qualified by the term ''consumer-initiated'' in the proposal where that distinction is made in disclosure questions in the Uniform Registration Forms.[150]

The Commission finds that the standards proposed by FINRA are reasonable and are designed to better enable FINRA to initially identify firms for potential designation as a Restricted Firm through objective criteria—one of FINRA's stated goals in initially proposing the rule.[151] Further, this approach conforms to another of FINRA's ''guiding principles'' in developing the proposal, to provide member firms with transparency regarding how proposed Rule 4111 would operate, such that firms ''could largely identify with available data the specific set of disclosure events that would count towards the proposed criteria and whether the firm had the potential to be designated as a Restricted Firm.'' [152] In addition, the proposed disclosure events covered by the proposed rule would not be limited to customer initiated events but would include, among other things, criminal matters, regulatory actions, and terminations.[153] FINRA's proposed definition of disclosure events would capture the types of activities FINRA believes are indicative of future investor protection concerns. For these reasons, the Commission finds FINRA's approach is designed to protect investors and the public interest.

With respect to expanding the five-year lookback, the same commenter objected to FINRA's proposed rule change establishing a maximum look-back period for the Registered Persons Associated with Previously Expelled Firms metric at five years, asserting it was based on ''overblown'' concerns that an unlimited look-back period would discourage firms from hiring registered representatives who may not themselves have violated any rules, thus resulting in unfair punishment.[154] Alternatively, the commenter suggested that this lookback period be extended to ten years.[155]

In response, FINRA explained that it avoided proposing an unlimited lookback period over a registered person's entire career and added a five-year look back to be consistent with the lookback periods for the other proposed metrics.[156] FINRA further reasoned that it added the requirement that the individual was registered at the now-expelled firm for a year or more because, in its experience, registered persons with more recent associations and longer tenures with expelled firms ''generally pose higher risk than other individuals.'' [157] Finally, FINRA stated that it believes the Expelled Firm Association Metric and Expelled Firm Association Metrics Thresholds ''appropriately serve[] the goal of preliminarily identifying firms that present a higher risk.'' [158] To help ensure the Expelled Firm Association Metric continues to serve its intended purposes, FINRA indicated it examined the Expelled Firm Association Metric and related thresholds and validated that they continue to serve the intended purpose of identifying firms posing a greater risk to customers.[159]

The Commission finds that FINRA has reasonably tailored its proposal and its related thresholds to identify those firms that present such a risk. In

[143] *Id.*

[144] *See* Harvin Letter; Better Markets Letter; and PIABA Letter.

[145] *See* Better Markets Letter at 16.

[146] *See* Notice at 78556.

[147] *See* High Risk Broker Approval Order at 81547.

[148] *Id.*

[149] *Id.*

[150] *See* FINRA March 4 Letter at 10; *see also* proposed Rule 4111(i)(4), including, among other things, criminal matters, regulatory actions, and terminations as disclosure events.

[151] *See* Notice at 78542.

[152] *Id.* at 78561. FINRA also stated that this desire to provide transparency is why it based proposed Rule 4111 on ''events disclosed on the Uniform Registration Forms, which are generally available to firms and FINRA.'' As noted above, FINRA remains aware that even though these data would be available to firms by accessing the BrokerCheck reports of each of their registered representatives, FINRA could ease firms' compliance burdens by providing additional tools. With this in mind, FINRA has committed to providing firms with additional guidance and resources to help facilitate member firms' independent calculations, and has extended the effective date following the Commission's approval in order to have sufficient time for development of such resources. *See* FINRA March 4 Letter at 4.

[153] *See* FINRA March 4 Letter at 10.

[154] *See* Better Markets Letter at 10.

[155] *Id.* at 16.

[156] *See* FINRA March 4 Letter at 11; *see also* Notice at 78560.

[157] *See* FINRA March 4 Letter at 11.

[158] *Id.* at 10.

[159] *Id.* at 11–12.

particular, the Commission finds FINRA's conclusion reasonable that a registered representative's association with an expelled firm that is more recent, and/or longer-term is more likely to pose a higher risk than those relationships that are further removed, or of a shorter-duration. The Commission encourages FINRA to regularly reassess the appropriateness of the related metrics and thresholds for identifying firms to help ensure these definitions accurately identify the highest risk firms.[160] For these reasons, the Commission finds FINRA's approach to identify firms that may pose a higher risk to investors is designed to protect investors and the public interest.

Finally, one commenter suggested that the proposed Preliminary Criteria for Identification Metrics could be improved by considering the nature and extent to which certain securities are sold by firms. In particular, this commenter expressed concern that ''high-risk firms will often focus a large percentage of their business on selling, for example, non-publicly traded investment products.'' [161] In the event that such a product fails, these firms' investors can be left without recourse if a firm collapses.[162] FINRA responded that the proposed Preliminary Criteria for Identification are intended to be ''replicable, objective and transparent,'' and are thus ''almost entirely based on disclosures on the Uniform Registration Forms'' that do not distinguish disclosures associated with product failures from any other disclosures made by the firm.[163] However, FINRA indicated it could account for the types of securities sold by a firm (including ''product failures'') when making its initial determination in the Rule 4111 process, or through the Consultation.[164] Further, FINRA stated that proposed Rule 4111(i)(15) requires that any determination of a Restricted Firm's Restricted Deposit Requirement would be required to consider, among other items, ''the nature of the firm's operations and activities.'' [165]

As previously noted, the Commission supports FINRA setting Preliminary Criteria for Identification in as transparent, replicable, and objective a manner as possible by reference to the Uniform Registration Forms. While the comment focuses on securities that may be riskier for investors, such as non-publicly traded securities, FINRA has demonstrated that the proposed ''funnel'' process affords the opportunity for FINRA to account for the types of securities sold by a firm. While not included in the Preliminary Criteria for Identification Metrics that serve as the threshold analysis, FINRA can identify and consider a firm's propensity to offer riskier securities during the Consultation process and in setting a Restricted Deposit Requirement and imposing appropriate conditions and restrictions on such a firm. For these reasons, the Commission finds FINRA's approach is designed to protect investors and the public interest.

One commenter suggested that proposed Rule 4111 should directly reference the ''specific disclosure questions or items'' in the Uniform Registration Forms that align to the Preliminary Criteria for Identification, rather than using alternative language for the definitions of each of the rule's categories.[166] FINRA responded that the definitions of the six categories of the Preliminary Criteria for Identification capture disclosures from multiple Uniform Registration Forms.[167] As such, FINRA believes that listing each of the questions from each such relevant form would ''be more confusing in the rule text and could lead to ongoing amendments to the definition as the [Uniform Registration Forms] are amended.'' [168] Instead, FINRA has elected to use substantive descriptions of the included disclosure events in proposed Rule 4111 with a ''plain-English approach'' that summarizes and describes disclosure events from the Uniform Registration Forms to make the definitions easier to read, understand, and use.[169] FINRA also stated that this approach is consistent with a related filing that was recently approved by the Commission (SR–FINRA–2020–011), where it elected not to include questions from the Uniform Registration Forms to avoid confusion and the need for ongoing amendments to the proposed rule change when these forms are revised in the future.[170] Although FINRA did not take this commenter's suggestion, it stated it is considering providing guidance that would map the Registered Person and Member Firm events to the relevant disclosure questions on the Uniform Registration Forms to help firms self-monitor their metrics.[171]

The same commenter stated that while the proposed definition of ''Member Firm Adjudicated Events'' includes ''[a] final investment-related, consumer-initiated customer arbitration award in which the member was a named party,'' [172] publicly available summary information on arbitration awards found on BrokerCheck and Arbitration Awards Online do not identify awards as ''investment-related'' or ''consumer-initiated.'' [173] FINRA agreed that additional clarity is warranted, and confirmed that this prong of the Member Firm Adjudicated Events definition is ''intended to capture all BrokerCheck disclosures of arbitration awards against firms,'' but stopped short of amending the rule text to make direct references to BrokerCheck. Due to the concerns over the potential for added confusion noted above, FINRA stated it was not appropriate to make such amendment in light of its plain-English approach.[174]

The Commission finds that FINRA's choice to provide a ''plain-English'' approach is reasonable and designed to provide clarity regarding what events would and would not be included in the Preliminary Identification Metrics. For these reasons, the Commission finds FINRA's approach is designed to protect investors and the public interest.

The same commenter also raised a question about the definition of Member Firm Pending Events, and whether there is a distinction between a ''pending investigation by a regulatory authority'' and a ''pending regulatory action that was brought by the SEC or CFTC, other federal regulatory agency, a state regulatory agency, a foreign financial regulatory authority, or a self-regulatory organization.'' While Forms U4 and U5 require disclosure of pending ''investigations,'' the commenter observed that Form U6 refers to a matter as an action and does not mention ''investigation.'' [175] FINRA stated that the proposed inclusion of ''pending investigations by a regulatory authority''

[160] If FINRA proposes to amend these rules in the future, FINRA would be required to file the proposed rule change with the Commission along with a concise general statement of the basis and purpose of the proposed rule change. The Commission would then publish a notice in connection with the proposed rule change in the **Federal Register** and post it on its public website to give interested persons an opportunity to comment on the proposed rule change. *See* Exchange Act Section 19(b)(1) and Rule 19b-4 promulgated thereunder.

[161] *See* PIABA Letter at 6.

[162] *Id.*

[163] *See* FINRA March 4 Letter at 9; *see also supra* note 66 (noting that one of the event categories, Member Firm Adjudicated Events, includes events that are derived from customer arbitrations filed with FINRA's dispute resolution forum).

[164] *Id.*

[165] *Id.; see also* 4111(i)(15).

[166] *See* Harvin Letter at 2.

[167] *See* FINRA March 4 Letter at 7.

[168] *Id.*

[169] *Id.* at 8.

[170] *Id.* at 7–8.

[171] *Id.* at 8.

[172] *See* proposed Rule 4111(i)(4)(D)(i).

[173] *See* Harvin Letter at 2.

[174] *See* FINRA March 4 Letter at 8.

[175] *See* Harvin Letter at 2; *see also* proposed Rule 4111(i)(4)(E)(ii) and (iii).

within the Member Firm Pending Events definition was intended to parallel a similar provision in the proposed Registered Person Pending Events definition.[176] However, FINRA stated that, from a technical perspective, ''Form BD contains no disclosure questions or DRP fields about pending investigations by a regulatory authority concerning firms.'' [177] As a result, FINRA filed Amendment No. 1 to make a technical correction to the definition of Member Firm Pending Events in proposed Rule 4111(i)(4)(E) by deleting ''a pending investigation by a regulatory authority'' reportable on the member's Uniform Registration Forms, as the relevant forms contain no such disclosure question or DRP fields.

One-Time Opportunity To Reduce Staffing Levels

Two commenters urged FINRA to add further conditions to the one-time staff reduction option afforded to those firms identified the first time the Rule 4111 process is used.[178] One commenter asked FINRA to require that any terminations would need to begin with those persons with the highest number of disclosure events or those that ''pose the greatest risk to investors,'' and that in all circumstances, firms should be prohibited from retaining certain persons ''due to their position within the firm or the amount of revenue they generate.'' [179] The other commenter criticized the allowance of a one-time staff reduction as incentivizing member firms to merely ''discharge 'low hanging fruit' and continue business as usual,'' rather than effectively monitor and supervise their registered representatives.[180]

FINRA responded that it agrees with the investor protection objectives of these two comments, but that the proposed rule change achieves these objectives.[181] For instance, FINRA believes that firms would have a strong incentive to use the staff-reduction option to avoid being subject to a Restricted Deposit Requirement or other conditions and restrictions for a significant period of time, and to use this option they would need to terminate representatives who have the kinds of disclosures captured by the rule and in sufficient numbers that cause the firm to fall below the stated thresholds.[182] FINRA also stated that prohibiting the firm from rehiring any terminated employees for one-year prevents a firm from evading the objectives of the proposed rule change since any member firm that seeks to hire such persons would need to also consider and comply with FINRA Rule 9522 (Initiation of Eligibility Proceeding; Member Regulation Consideration) to the extent that any such persons are subject to a ''statutory disqualification'' as defined in Section 3(a)(39) of the Exchange Act.[183] Additionally, FINRA stated that since a firm would not be able to use the staff-reduction option a second time, it would deter firms from thereafter hiring individuals with a record of disciplinary issues after a staff reduction and incentivize those firms to improve compliance going forward to avoid a Restricted Firm designation in the future.[184]

The Commission finds that the one-time staff reduction option, along with a one-year restriction on rehiring by the firm from which those employees were terminated, as proposed, is a reasonable means to materially reduce the current risk to investors and to incentivize firms to improve compliance over a longer-term period to avoid both a Restricted Firm designation the first time they meet the Preliminary Criteria for Identification, and also being re-identified in a subsequent Rule 4111 evaluation. For these reasons, the Commission finds that FINRA's approach is designed to protect investors and the public interest.

One of the commenters also called on FINRA to amend the proposal to prohibit those employees who are laid off during the Consultation process from being ''hired by other firms for at least one year, and never by another high-risk firm.'' [185] While FINRA stated that a separate rulemaking (amending FINRA Rule 1017), recently approved by the Commission, may also help deter firms from hiring recidivist registered representatives recently fired by other firms,[186] the commenter argued this rule change is insufficient, as it ''does not prohibit the hiring [of such terminated employees], but merely requires that the hiring firm impose an additional supervisory regime over troublesome brokers.'' [187]

FINRA disagreed, noting that under the approved changes to Rule 1017(a)(7), member firms must submit a written request to FINRA seeking a materiality consultation whenever a person ''seeks to become an owner, control person, principal or registered person of the member'' who has one ''final criminal matter'' or two ''specified risk events'' within the past five years.[188] During this materiality assessment, the Department may then require the firm make a Form CMA filing [189]—and obtain FINRA's approval thereafter—before such person may be hired.[190] Further, FINRA stated that one of the examples provided in proposed Rule 4111.03 of the conditions and restrictions the Department may impose on a Restricted Firm is ''limitations on business expansions,'' which FINRA has indicated ''could include limitations on the kinds of persons that a Restricted Firm may hire.'' [191] Separately, FINRA also stated that the Commission recently approved rule changes that will potentially impact employees terminated under proposed Rule 4111(c)(2) when seeking to join another firm.[192]

The Commission finds that the incentives created by the one-time staff reduction option, as proposed, reasonably align with FINRA's stated purpose to incentivize firms to reduce their risk profile and improve their compliance. For these reasons, the Commission finds FINRA's approach is designed to protect investors and the public interest. While the Commission recognizes that FINRA's recent amendments to the materiality

[176] *See* FINRA March 4 Letter at 9; *see also* proposed Rule 4111(i)(4)(B)(ii).

[177] *See* FINRA March 4 Letter at 9.

[178] *See* Better Markets Letter; PIABA Letter.

[179] *See* Better Markets Letter at 17.

[180] *See* PIABA Letter at 7.

[181] *See* FINRA March 4 Letter at 21.

[182] *Id.* at 21–22.

[183] *Id.* at 22 note 60.

[184] *Id.* at 22; *see also* Notice at 78562.

[185] *See* Better Markets Letter at 16–17. In its letter, Better Markets also suggested—as an alternative to their suggestion that FINRA adopt an order for the employees to be terminated—that FINRA could require would be that firms ''terminate or lay-off those brokers who would have had a harmful combination of frequent and severe violations of FINRA and SEC rules that have a direct impact on investors.'' Better Markets Letter at 16.

[186] *See* Exchange Act Release No. 90635 (Dec. 10, 2020), 85 FR 81540 (Dec. 16, 2020) (File No. FINRA–2020–011) (''High Risk Broker Approval Order''). Pursuant to FINRA Rule 1017, any broker-dealer seeking to add a natural person who: (1) Has, in the prior five years, one or more final criminal matters or two or more specified risk events and (2) seeks to become an owner, control person, principal, or registered person of the member must submit a written request seeking a materiality consultation for the contemplated activity so that FINRA can determine whether a the firm must file a continuing member application.

[187] *See* Better Markets Letter at 17.

[188] *See* FINRA March 4 Letter at 22–23.

[189] Prior to making certain changes to its ownership, control, or business operations, a FINRA member firm must file a Form Continuing Membership Application or ''Form CMA,'' and obtain FINRA's pre-approval to do so. *See* FINRA Rule 1017(a) (Application for Approval of Change in Ownership, Control, or Business Operations).

[190] *See* FINRA March 4 Letter at 22–23.

[191] *Id.* at 23; *see* proposed Rule 4111.03(1), which sets out that FINRA may impose ''limitations on business expansions, mergers, consolidations, or changes in control,'' among the examples of potential conditions or restrictions that may be placed on Restricted Firms.

[192] *See* FINRA March 4 Letter at 22; *see also* High Risk Broker Approval Order at 81544–45.

consultation process noted above, could provide an additional layer of deterrence to firms' hiring of recidivist representatives terminated by other firms, it finds that the critique of previously approved Rule 1017(a)(7) is beyond the subject matter of this proposed rule change and therefore is beyond the scope of this filing.

Calls To Expel Restricted Firms That Fail To Improve

One commenter argued that proposed Rule 4111 should be amended so that if a firm is designated a Restricted Firm in one year, and does not improve to avoid re-designation in either of the next two years, FINRA should ''expel the firm, and de-license and bar all current brokers who were employed by the firm at the time of initial designation.'' [193] Further, this commenter argued the expulsion order ''should not be appealable and should take immediate effect.'' [194] FINRA responded that this request would essentially broaden the statutory definition of ''disqualified persons,'' ''which is not within FINRA's jurisdiction to do.'' [195] Additionally, FINRA asserted that the call for expulsion without a right to appeal would be ''inconsistent with the fair procedure requirements in Section 15A(b)(8) of the Securities Exchange Act of 1934.'' [196]

The Commission agrees with FINRA that the expulsion of a firm without right to appeal the decision would be inconsistent with the fair disciplinary procedures that member firms are to be afforded pursuant to Section 15A(b)(8). Moreover, the Commission finds that proposed Rule 4111 adopts a reasonable set of conditions and restrictions on firms with outlier-level disclosure events, and incentivizes such firms to improve their behavior for the protection of the investing public. Still, the Commission encourages FINRA to, after gaining sufficient experience post-effectiveness, to review whether proposed Rule 4111 is adequately meeting its intended goals or if further amendments would be appropriate.[197] For these reasons, the Commission does not believe that it is necessary to address whether, as FINRA states, the commenter's proposal would impermissibly broaden the definition of ''statutory disqualification'' under the Exchange Act.

Concerns About the Definition of ''Covered Pending Arbitration Claim'' and the Restricted Deposit Account

Two commenters expressed concerns regarding the proposed definition of a ''Covered Pending Arbitration Claim.'' [198] One commenter argued that adopting a definition to only cover claims if they exceed a firm's excess net capital ''improperly excludes claims that are less than a firm's excess net capital yet may still remain unpaid by the firm.'' [199] In response, FINRA stated that the term ''Covered Pending Arbitration Claim'' excludes final arbitration matters that have resulted in either an award or settlement, and that ''regardless of a firm's excess net capital, if a final arbitration award or settlement is unpaid, that would be a factor for FINRA to consider when determining a Restricted Deposit Requirement and reviewing a firm's request for a withdrawal from a Restricted Deposit.'' [200] The same commenter also argued that because FINRA will assess each firm based on a fixed point in time, this definition will enable firms to ''manipulate whether an arbitration claim is covered simply by adjusting its excess net capital while FINRA is determining the Restricted Deposit Requirement.'' [201] FINRA responded that although its assessment of a firm will occur on a fixed date, proposed Rule 4111(i)(15) would require the Department to review a firm's financial factors, including its net capital levels ''for relevant periods,'' enabling the Department to detect material changes in a firm's net capital levels during or in anticipation of a possible review under Rule 4111 and to ''take into account attempts by a firm to manipulate financial-related factors.'' [202]

The Commission finds that it is reasonable to exclude final arbitration matters that have resulted in an award or settlement from a definition designed to capture only pending claims. Further, the Commission agrees that proposed Rule 4111 has provided a mechanism for FINRA to account for such unpaid arbitration awards or settlements resulting from a final arbitration in crafting a Restricted Firm's Restricted Deposit Requirement, and in evaluating any request to withdraw funds from its Restricted Deposit Account. The Commission also finds that the design of proposed Rule 4111, which would require FINRA to evaluate each firm's financial factors across ''relevant periods,'' should be allow FINRA to detect potential manipulation of a firm's net capital amounts. For these reasons, the Commission finds FINRA's approach is designed to protect investors and the public interest.

Another commenter asserted that the term ''claim amount'' should be removed from the definition of a ''Covered Pending Arbitration Claim,'' arguing there is no support for the proposition that the ''claim amount'' stated in an arbitration claim has ''any basis in reality.'' [203] Instead, this commenter suggested that the definition of ''Covered Pending Arbitration Claim'' be revised to refer to the accounting standards pertaining to loss contingencies as adopted by the Financial Accounting Standards Board, so as to account for the probability that a pending arbitration claim results in a loss, and whether that potential loss can be reasonably estimated.[204]

[193] *See* Better Markets Letter at 19.

[194] *Id.* Better Markets argued that the rationale for this remedy is that firms that have been twice-designated, but not significantly improved their compliance culture have ''prove[d] that they are irredeemable, and they do not deserve to be permitted to serve, or more likely, harm any additional investors.'' *Id.*

[195] *See* FINRA March 4 Letter at 26.

[196] *Id.* at 26–27; *see also* Exchange Act Section 15A(b)(8) (Requiring that FINRA's rules, in general, ''provide a fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the association of any person with respect to access to services offered by the association or a member thereof.'').

[197] FINRA plans to conduct a review of the effectiveness of proposed Rule 4111 after gaining sufficient experience with its operation. *See* Notice at 78548. Among other things, FINRA would review whether the Preliminary Identification Metrics Thresholds are sufficiently targeted and effective at identifying member firms that pose higher risks. *Id.*

[198] *See* PIABA Letter; Harvin Letter. As noted above, proposed Rule 4111(i)(2) defines Covered Pending Arbitration Claim as an investment-related, consumer-initiated claim filed against the member or its associated persons in any arbitration forum that is unresolved; and whose claim amount (individually or, if there is more than one claim, in the aggregate) exceeds the member's excess net capital.

[199] *See* PIABA Letter at 7.

[200] *See* FINRA March 4 Letter at 23. FINRA also stated that other of its rules ''currently prohibit member firms or registered representatives who do not pay arbitration awards in a timely manner from continuing to engage in the securities business under FINRA's jurisdiction.'' *Id.* at 23 note 65; *see also* proposed Rule 4111(f) and (i)(15).

[201] *See* PIABA Letter at 7.

[202] *See* FINRA March 4 Letter at 24.

[203] *See* Harvin Letter at 3; *see also* Notice at 78541 note 10 (FINRA has stated that the ''claim amount'' only includes claimed compensatory loss amounts and not those for pain and suffering, punitive damages or attorney's fees. The claim amount shall be the maximum amount that the member or associated person is potentially liable regardless of whether the claim was brought against additional persons or the associated person reasonably expects to be indemnified, share liability or otherwise lawfully avoid being held responsible for all or part of such maximum amount.).

[204] *Id.* at 5. Specifically, Harvin pointed to Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) Topic 450–20 (Loss Contingencies), ASC 450–20–25 (Recognition), ASC 450–20–25–2, ASC–450–20 (Glossary), and ASC 450–20–55–13. *Id.* at 3–5.

FINRA responded that it is necessary that all Covered Pending Arbitration Claims be considered within the requirements, because based on its experience, firms do not necessarily recognize a ''loss contingency'' for such a claim before concluding a proceeding.[205] FINRA also indicated it believes that proposed Rule 4111(i)(15) ''is already flexible enough to address'' the commenter's concerns regarding loss contingencies.[206] Finally, FINRA clarified that while the commenter seemed to ''presume [ ] that the Restricted Deposit Requirement amount would establish a floor based on the amount of the firm's Covered Pending Arbitration Claims,'' the amount of such claims will serve merely as one factor, among many others, considered when FINRA crafts a firm's Restricted Deposit Requirement.[207]

The Commission finds it is reasonable for FINRA to retain the term ''claim amount'' within the proposed definition of a Covered Pending Arbitration Claim. To operationalize Rule 4111, FINRA will need to be able to utilize consistent metrics that provide for comparable data across firms of similar sizes. The Commission agrees that the lack of consistency in firms recognizing ''loss contingencies'' for pending claims would undermine the usefulness of such figures in making initial identifications of those firms with outlier-level disclosure events relative to similarly sized peers. Further, the Commission agrees that proposed Rule 4111, and specifically the proposed definition of a Restricted Deposit Requirement, provides flexibility to enable FINRA to account for loss contingencies when thereafter determining an appropriate deposit requirement for Restricted Firms. Finally, pursuant to proposed Rule 4111(d), a firm would have an opportunity to demonstrate that it should not be required to be subject to the maximum Restricted Deposit Requirement by arguing that that certain Covered Pending Arbitration Claims were improperly considered in determining its restricted status.[208] For these reasons, the Commission finds FINRA's approach is designed to protect investors and the public interest.

Concerns About the Calculation of a Firm's Maximum Restricted Deposit Requirement

One commenter stated that as one of the purposes of proposed Rule 4111 is to ''give FINRA another tool to incentivize member firms to . . . pay arbitration awards,'' imposing a Restricted Deposit Requirement on any firm that lacks Covered Pending Arbitration Claims or other unpaid arbitration awards would be unnecessary and that calculation of the Restricted Deposit in these circumstances would be arbitrary.[209] FINRA disagreed, asserting that the primary purpose of proposed Rule 4111 is to incentivize member firms with outlier-level risks to change their behavior, and therefore confirmed that under the proposal the Department could impose a Restricted Deposit Requirement on a Restricted Firm regardless of whether it has any unpaid arbitration awards or Covered Pending Arbitration Claims.[210]

The same commenter criticized FINRA's failure to include in proposed Rule 4111(i)(15) the ''average total revenue paid out in the past five years in arbitration and customer settlements and litigation'' as a factor for determining a firm's maximum Restricted Deposit Requirement.[211] According to the commenter, the ''average total revenue paid'' would represent a more accurate metric than the average amount of arbitration and customer settlements paid because the latter is not indicative of a firm having difficulty paying arbitration awards. FINRA questioned the commenter's assumption, stating that even if a Restricted Firm has a recent history of paying arbitration awards and settlements, it does not mean that a Restricted Deposit Requirement would not be an appropriate step to address the risks such firm poses to investors.[212] FINRA responded that in general, it believes the factors included in the rule are both specific enough to be relevant for the Department in determining a firm's maximum Restricted Deposit Requirement, and also flexible enough to allow the Department to weigh those factors against all relevant facts and circumstances for a given firm.[213] Moreover, the Consultation process would provide an opportunity for a firm to present why the maximum Restricted Deposit Requirement amount does not properly account for any particular factor in the rule, including by presenting the firm's average total revenue paid out in the past five years in arbitration and customer settlements and litigation.[214]

The Commission finds that the proposed rule change to enable FINRA to impose a Restricted Deposit Requirement on Restricted Firms is a reasonable component of proposed Rule 4111 and is reasonably designed to address the proposed rule's goal of improving member firm behavior for the protection of the investing public. Even where a firm lacks Covered Pending Arbitration Claims or other unpaid arbitration awards, the imposition of a Restricted Deposit Requirement is a reasonable means of accomplishing the proposal's primary purpose. Moreover, the Commission agrees that the flexibility afforded by proposed Rule 4111(i)(15) should enable FINRA to account for such factors as the ''average total revenue paid out in the past five years in arbitration and customer settlements and litigation'' when determining the appropriate deposit requirement for a firm.

Further, the Commission disagrees with the assertion that the calculation of a firm's Restricted Deposit Requirement would be arbitrary. FINRA has laid out numerous factors in proposed Rule 4111(i)(15) to discern an appropriate maximum Restricted Deposit Requirement for Restricted Firms that will incentivize improved behavior without undermining that firm's financial stability. Moreover, the proposed rule's Consultation process provides firms an opportunity to discuss the imposition of a lower Restricted Deposit Requirement.[215] As FINRA has stated, the Consultation process is designed to specifically account for the disparities in risk presented by each firm initially identified through the Preliminary Identification Criteria, and to thereafter enable the Department to craft a Restricted Firm's Restricted Deposit Requirement in light of discussions with that firm, and to account for that firm's ''unique characteristics.'' Further, FINRA stated it will ''tailor the member firm's maximum Restricted Deposit Requirement amount to its size, operations and financial conditions . . .

[205] *See* FINRA March 4 Letter at 24.

[206] *Id.* FINRA also stated that, in this regard, firms would not be precluded during the Consultation from asserting that the Covered Pending Arbitration Claims factor should be evaluated by the Department ''in relation to the probability that those pending claims would evolve into actual liabilities and that the size of such actual liabilities would be less than the stated amount of the claims.''

[207] *Id. See supra* note 90 (detailing a series of proposed factors the Department would consider when determining a Restricted Firm's maximum Restricted Deposit Requirement).

[208] *See* Notice at 78545.

[209] *See* Harvin Letter at 5–7.

[210] *See* FINRA March 4 Letter at 13; *see also* Notice at 78541 (stating FINRA believes that the ''direct financial impact of a restricted deposit is most likely to change [a] member firms' behavior—and therefore protect investors.'').

[211] *See* Harvin Letter at 7.

[212] *See* FINRA March 4 Letter at 14.

[213] *Id.* at 13.

[214] *Id.* at 13–14; *see also* Notice at 78545–46.

[215] *See* Notice at 78545.

[to] be consistent with the objectives of the rule, but [without] significantly undermin[ing] the continued financial stability and operational capability of the member firm as an ongoing enterprise over the next 12 months'' [216] The Commission finds this process is a reasonable means of establishing an appropriate Restricted Deposit Requirement for individual Restricted Firms that affords those firms with sufficient opportunity to affect the outcome of FINRA's determination. For these reasons, the Commission finds FINRA's approach is designed to protect investors and the public interest.

Unpaid Arbitration Awards and Settlements

One commenter asserted that proposed Rule 4111 does not explicitly address unpaid arbitration awards and settlements.[217] In particular, this commenter criticized proposed Rule 4111's failure to require or incentivize Restricted Firms to pay unpaid arbitration awards and settlements in connection with imposing a Restricted Deposit Requirement.[218]

FINRA responded that firms are already required to pay unpaid arbitration awards and settlements, and that any Restricted Deposit Requirement will serve only as an additional, mandatory obligation—with each requirement serving an ''important, but different, regulatory purpose.'' [219] FINRA also stated it currently suspends member firms and their registered representatives from membership or association where they do not timely pay arbitration awards, and that proposed Rule 4111 is designed to address investor protection concerns beyond unpaid awards.[220] Further, FINRA stated it believes that proposed Rule 4111 ''may have important ancillary effects in addressing unpaid customer arbitration awards.'' [221]

The same commenter asserted that as unpaid and anticipated arbitration awards are part of the proposed criteria used to determine whether a firm should be designated as a Restricted Firm, and thereafter, to determine its maximum Restricted Deposit Requirement, it is ''axiomatic'' that the maximum deposit FINRA ultimately imposes should ''at the very least'' cover such awards.[222] However, the commenter also stated that proposed Rule 4111, in limiting what FINRA may require in the way of a restricted deposit to avoid ''significantly undermin[ing] the continued financial stability and operational capability of the member as an ongoing enterprise over the next 12 months,'' may result in more thinly capitalized firms not being subject to a Restricted Deposit Requirement sufficient to cover all outstanding arbitration awards and settlements, ''let alone 'Covered Pending Arbitration Claims.''' [223]

In response, FINRA stated that a key reason why FINRA proposed a factor-based approach to determining a Restricted Deposit Requirement rather than a formulaic one is because it is less susceptible manipulation by firms.[224] Accordingly, nothing in proposed Rule 4111 would establish a floor for the amount of a Restricted Deposit Requirement.[225] Nevertheless, FINRA reiterated that proposed Rule 4111 would ''not absolve firms from paying unpaid arbitration awards,'' and that a member's ''thin capitalization at the time of the Consultation would be only one factor'' that the Department considers during that firm's Consultation process, and would ''not necessarily result in a lower'' Restricted Deposit Requirement.[226]

Finally, this commenter also suggested that proposed Rule 4111 should be amended to address how those investors owed unpaid arbitration awards might access funds from a Restricted Firm's restricted deposits to pay themselves.[227] FINRA responded that although it understands the purpose of the request, proposed Rule 4111 is intended to ''address the risks posed to investors by individual brokers and member firms that have a history of misconduct,'' and while the rule has features to incentivize payment of unpaid arbitration awards, ''it is not intended to alter how aggrieved investors currently may collect on an arbitration award.'' [228]

The Commission finds it is reasonable for FINRA to adopt the Restricted Deposit Requirement as a separate obligation, distinct from a Restricted Firm's existing obligations on member firms to satisfy unpaid arbitration awards. As FINRA stated, its rules already include comprehensive obligations on member firms that owe unpaid arbitration awards, and impose significant penalties on those firms that fail to do so.[229] The Commission thus finds that structuring proposed Rule 4111's Restricted Deposit Requirement to instead primarily address investor protection concerns more broadly, with the possibility of reducing the number of unpaid customer arbitration awards as a potential ancillary benefit, is reasonable. Moreover, the Commission finds that FINRA's proposed use of the Consultation process—taking a fulsome view of a firm's capitalization, including the potential effect of any unpaid arbitration awards—when determining its Restricted Deposit Requirement, provides a reasonable safeguard for evaluating the application of the proposed rule to thinly capitalized firms. This approach should enable FINRA to both further the intended goal of proposed Rule 4111 to incentivize better behavior from firms without undermining their financial stability, while also taking into account their pre-existing obligations to satisfy unpaid arbitration awards. Finally, as the Restricted Deposit Requirement is intended to provide an obligation on Restricted Firms distinct from their pre-existing obligations to satisfy unpaid arbitration awards, the Commission finds the issue of collecting unpaid arbitration awards by investors is beyond the subject matter of this proposed rule change and therefore, is beyond the scope of this filing.

Another commenter stated that FINRA's data on unpaid arbitration awards do not justify its establishment of ''an elaborate system of additional

[216] *Id.*

[217] *See* PIABA Letter at 3.

[218] *Id.* at 4.

[219] *See* FINRA March 4 Letter at 18.

[220] *Id.* Specifically, FINRA indicated that proposed Rule 4111 would cover those firms that, ''based on statistical analysis of their prior disclosure events, are substantially more likely than their peers to subsequently have a range of additional events indicating various types of harm or potential harm to investors.'' *See* Notice at 78565.

[221] *Id.* In particular, FINRA thinks that proposed Rule 4111 may incentivize firms to reduce their risk profile and scope of violative conduct to avoid being deemed a Restricted Firm in the first place. FINRA further believes that proposed Rule 4111 may also incentivize firms to obtain insurance for potential arbitration awards because the proposed rule would account for this type of insurance coverage in determining any firm's Restricted Deposit Requirement. *See* Rule 4111(i)(15)(A) and the discussion about FINRA's determination of a Maximum Restricted Deposit Requirement, *supra* note 90. Finally, FINRA argued that proposed Rule 4111 includes a number of presumptions as to the Department's assessment of any previously designated Restricted Firm's application to withdraw from its Restricted Deposit, ''that would further incentivize the payment of arbitration awards.''

[222] *See* PIABA Letter at 3.

[223] *Id.*

[224] *See* FINRA March 4 Letter at 19.

[225] *Id.*

[226] *Id.*

[227] *See* PIABA Letter at 4. In particular, PIABA indicated that proposed Rule 4111 should address how an investor may access funds from a firm's restricted deposit in the case of Former Members ''if the former firm refuses to apply for a withdrawal, or if no one from the former firm is available to make such a request on behalf of the investor.'' *Id.*

[228] *See* FINRA March 4 Letter at 19–20.

[229] *See* Notice at 78565 note 151 and accompanying text; *see also* FINRA March 4 Letter at 7 note 15 and accompanying text.

regulation to address the issue.'' [230] In response, FINRA stated that addressing the issue of unpaid arbitration awards was not the primary purpose of the proposed rule change. Specifically, FINRA stated that the proposed rule change's primary purpose is ''to create incentives for members that pose outlier-level risks to change behavior.'' [231] At the same time, FINRA believes that the proposed rule change ''may have important ancillary effects in addressing unpaid customer arbitration awards [including deterring] behavior that could otherwise result in unpaid arbitration awards by incentivizing firms to reduce their risk profile and violative conduct to avoid being deemed a Restricted Firm and becoming subject to a Restricted Deposit Requirement or other conditions or restrictions for a year or more.'' [232] FINRA stated that it has ''long been concerned about non-payment of arbitration awards'' [233] and hopes to continue the dialogue about ''addressing the challenges of customer recovery across the financial services industry.'' [234]

FINRA has clarified that the primary purpose of the proposed rule change is to incentivize better behavior from firms without undermining their financial stability. While the Restricted Deposit Requirement may also reduce the number of unpaid customer arbitration awards as a potential ancillary benefit, the Commission finds that the issue of collecting unpaid arbitration awards by investors is beyond the subject matter of this proposed rule change and therefore, is beyond the scope of this filing.

Expungement Concerns and Undercounting Arbitrations

One commenter expressed concern about the ''pervasive nature of expungement of customer disputes'' and how that might undermine FINRA's ability to determine whether a firm should be deemed a Restricted Firm under proposed Rule 4111.[235] This commenter asserted that FINRA's inability to review the ''full breadth of relevant disclosures'' due to certain events being expunged from the record will likely lead to it overlooking recidivist firms and registered representatives that should be designated as Restricted Firms.[236] As a result, the commenter argued that proposed Rule 4111 incentivizes member firms and registered representatives to ''sanitize their records'' by pursuing expungement of customer complaints.[237]

FINRA responded that its rules require accurate disclosures of member firms and individuals, who are ''subject to disciplinary action and possible disqualification if they fail to do so.'' [238] Further, FINRA stated that even if expungement requests rise due to proposed Rule 4111, that does not mean that there will be a corresponding increase in expungements that are granted, as such approvals may only be provided ''after a court of competent jurisdiction has entered an order directing expungement or confirming an arbitration award containing expungement relief.'' [239] FINRA also explained in its Response that its Office of the Chief Economist has tested the proposed thresholds under proposed Rule 4111 based on existing CRD data,[240] and believes that the existing CRD data and proposed criteria using these data are ''effective at identifying firms that pose greater risks to customers.'' [241] Finally, FINRA also pointed out that although proposed Rule 4111 is not intended to address the expungement process, it has undertaken a prior separate rulemaking to ''substantially strengthen'' this process.[242]

Given that the proposed rule change does not affect FINRA's expungement process, the Commission finds recommendations to amend it are outside the scope of the proposed rule change.

The Restricted Deposit Requirement and a Member Firm's Net Capital Requirement

One commenter argued that, although proposed Rule 4111 requires deposits in the Restricted Deposit Account to be deducted when determining a member firm's net capital under Exchange Act Rule 15c3–1 and FINRA Rule 4110 (Capital Compliance), the actual effect of the rule is to require additional net capital of the firm.[243] This commenter argued that, under Rule 4110(a), FINRA may already prescribe greater net capital or net worth requirements on carrying or clearing members, which the commenter stated would appear to provide FINRA ''ample authority'' to address the issue of unpaid customer arbitration awards.[244] FINRA responded by noting that proposed Rule 4111's primary purpose is incentivizing member firms to engage in less risky behaviors, and the extent to which the rule change addresses unpaid arbitration awards, this is merely an ancillary benefit.[245] Further, FINRA stated that it had considered the alternative of applying increased capital requirements on Restricted Firms, but determined this approach would be accompanied by ''several drawbacks with respect to economic incentives and anticipated impacts.'' [246]

The Commission finds the use of a separate and distinct deposit requirement is reasonable and designed to accomplish the separate purpose of incentivizing Restricted Firms to engage in less risky behaviors. The Commission anticipates that FINRA members will include in their decision-making the possibility of having their funds held in an account with significant withdrawal restrictions when making certain business determinations, which should reduce their propensity to engage in

[230] *See* Harvin Letter at 5.

[231] *See* FINRA March 4 Letter at 12.

[232] *Id.*

[233] *See* FINRA March 4 Letter at 18 note 52 (citing FINRA, Discussion Paper—FINRA Perspectives on Customer Recovery, at pp. 1, 19 (Feb. 8, 2018), available at *https://www.finra.org/sites/default/files/finra_perspectives_on_customer_recovery.pdf*).

[234] *Id.*

[235] *See* PIABA Letter at 4–5.

[236] *Id.* at 4.

[237] *Id.*

[238] *See* FINRA March 4 Letter at 20. FINRA also stated that the source of disclosures on Form U6 are regulators, and that FINRA's Department of Credentialing, Registration, Education and Disclosure ''conducts a public records review to verify the completeness and accuracy of criminal disclosure reporting.'' *Id.* (citing Notice at 79561).

[239] *Id.*

[240] Specifically, FINRA asserted it believes the use of existing CRD data in conjunction with the criteria proposed under the proposed rule effectively identifies higher risk firms. FINRA bases this assertion on its comparison of firms captured by the proposed thresholds to the firms that had recently been expelled, that had unpaid arbitration awards, that Department staff had identified as high risk for sales practice and fraud based on its own risk-based analysis, and that subsequently had additional disclosures after FINRA had made these preliminary identifications. *See* FINRA March 4 Letter at 20–21.

[241] *Id.*

[242] *Id.; see* Exchange Act Release No. 90000 (Sep. 25, 2020), 85 FR 62142 (Oct. 1, 2020) (FINRA No. SR–FINRA–2020–030). FINRA temporarily withdrew this rule filing from Commission consideration so that they can further consider whether modifications to the filing are appropriate. *See* FINRA Statement on Temporary Withdrawal of Specialized Arbitrator Roster Rule Filing (May 28, 2021).

[243] *See* Harvin Letter at 7.

[244] *Id.*

[245] *See* FINRA March 4 Letter at 12.

[246] *Id.; see also* Notice at 78556–57. FINRA stated that maintaining the firm's assets under an increased net capital requirement would not be isolated to a restricted account and thus ''may be fungible with other firm assets,'' potentially resulting in such assets being withdrawn and used by the firm during the restricted period. Thus, FINRA determined that such an approach would likely provide a much lower deterrent effect on firms than the Restricted Deposit Requirement under proposed Rule 4111. Similarly, FINRA believes that using an increased net capital requirement, rather than the Restricted Deposit Requirement, may not sufficiently incentivize behavioral changes from those Restricted Firms that already were carrying substantial excess net capital.). *See* Notice at 78557.

risky behaviors that are not in their customers' interests. For these reasons, the Commission finds FINRA's approach is designed to protect investors and the public interest.

Potential Harm to Small Firms

One commenter asserted that proposed Rule 4111 will have unintended consequences for small firms including ''increased costs to defend and reporting.'' [247] FINRA responded that, although some reporting and defense costs may increase for a limited number of firms, this will impact firms of all sizes, and it does not believe proposed Rule 4111 imposes either disproportionate costs or impacts on small firms.[248] These costs could include, for example, when a firm seeks to rebut the presumption that it is a Restricted Firm, which would involve added costs to collect and provide information to FINRA, and when a firm seeks review through the expedited proceeding proposed in Rule 9561.[249] FINRA further indicated that proposed Rule 4111 is designed to impact a limited number of firms that pose significantly higher risk compared to similarly sized peers—across all firm sizes.[250] The proposed ''funnel'' process proposed by FINRA includes subsequent review and a Consultation process provides safeguards designed to protect firms of all sizes against misidentification.[251] Finally, FINRA reiterated that the rule requires FINRA to consider a firm's size, among other things, when it determines to impose a Restricted Deposit Requirement or other conditions or restrictions, and thus should not have a disproportionate impact on small firms.[252]

In raising concerns about the impact on small firms, this commenter also provided a partial list of purported disclosure events applicable to the commenter's firm, including that seven of the firm's 70 representatives were previously at now-expelled firms ''during their career.'' [253] FINRA stated that the list of disclosure events included in this commenter's letter were broader than those covered by the Preliminary Criteria for Identification, and could not determine whether they would be captured by the proposed criteria without more information.[254] For example, in reference to the individuals who had been at an expelled firm ''during their careers,'' FINRA stated that the Registered Persons Associated with Previously Expelled Firms category only covers a narrow scope of those registered representatives who were registered with an expelled firm for at least one year and whose registration with the previously expelled firm terminated during the Evaluation Period.[255]

The Commission finds that the proposal, which is designed to identify a limited number of firms with a significantly higher level of risk related disclosures than similarly situated peers with thresholds tailored to seven different firm sizes, takes a reasonable approach to identifying firms that pose the greatest risk to investors, without being unduly burdensome towards smaller firms. Further, FINRA's commitment to tailoring any Restricted Deposit Requirement or other conditions or restrictions it imposes on any firm it designates as a Restricted Firm in a manner that accounts for the firm's size and financial condition should help tailor the application of proposed Rule 4111 to the unique risks presented by particular firms. Finally, pursuant to proposed Rule 4111(d), a firm would have an opportunity to demonstrate that it should not be required to be subject to the maximum Restricted Deposit Requirement by arguing that that certain disclosures were improperly considered in determining its restricted status. For these reasons, the Commission finds FINRA's approach is designed to protect investors and the public interest.

Restricted Deposit Subject to Swings in Value

One commenter asserted that proposed Rule 4111 fails to address fluctuations in the valuation of ''qualified securities'' that a Restricted Firm may deposit into its Restricted Deposit Account as opposed to depositing cash.[256] The commenter argued that as there is no guarantee that securities used for this purpose will retain sufficient value until they are redeemed to pay the firm's outstanding debt, and proposed Rule 4111 lacks a ''mechanism . . . to ensure the Restricted Deposit Account maintains sufficient value between FINRA reviews,'' the proposal should be amended to require account replenishment as necessary.[257]

FINRA has stated that proposed Rule 4111(a) only permits a Restricted Firm to satisfy its Restricted Deposit Requirement with ''a security issued by the United States or a security in respect of which the principal and interest are guaranteed by the United States.'' [258] FINRA believes such securities possess a sufficiently stable value such that any post-deposit price fluctuation would not affect the financial impact of their use to satisfy the Restricted Deposit Requirement, nor the resulting incentive for the Restricted Firm to reform.[259] Nevertheless, FINRA filed Amendment No. 2 to clarify that the proposed rule change would not require a Restricted Firm to make additional deposits in order to maintain continuously the original value of qualified securities in its Restricted Deposit Account, if such qualified securities have declined in value.[260] Likewise, FINRA clarified that, if the aggregate value of the assets deposited by a member firm increases above the firm's Restricted Deposit Requirement, that would not be a basis for the firm to request a withdrawal from its Restricted Deposit Account. Rather, if a firm is re-designated as Restricted Firm in the following year, it would need to deposit additional cash or qualified securities if needed to meet the Restricted Deposit Requirement at that time.[261]

The Commission finds that FINRA's determination to not require a Restricted Firm to replenish a Restricted Deposit Account to address fluctuations in the value of qualified securities is reasonable. Securities included within the ''qualified securities'' definition,

[247] *See* IBN Letter.

[248] *See* FINRA March 4 Letter at 5.

[249] *Id.*

[250] *Id.*

[251] *Id.*

[252] *Id.*

[253] *See* IBN Letter.

[254] *See* FINRA March 4 Letter at 6.

[255] *Id.* The Registered Persons Associated with Previously Expelled Firms category only includes any Registered Person In-Scope who was registered with the previously expelled firm (1) for at least one year; and (2) ''whose registration with the previously expelled firm terminated during the Evaluation Period'' (limiting this to the prior five years from the current firm's Evaluation Date). *See* FINRA Rule 4111(i)(4)(F). The same commenter also referenced a registered representative with a ''financial disclosure'' related to ''medical losses'' and expressed concerns about pending arbitrations. *See* IBN Letter. FINRA reiterated that neither a registered person's ''financial disclosures'' (*e.g.,* the compromises with creditors, bankruptcy petitions, bond-related questions, unsatisfied judgments, and unsatisfied liens found in Form U4, Questions 14K, 14L, and 14M), nor pending arbitrations and written consumer-initiated complaints like those disclosed under Form U4 Question 14I are counted in the Preliminary Criteria for Identification. *See* FINRA March 4 Letter at 6–7. Only those ''awards and settlements in specified investment-related, consumer initiated arbitrations and complaints'' are counted within the Preliminary Criteria for Identification. *See* FINRA March 4 Letter at 7.

[256] *See* PIABA Letter at 7.

[257] *Id.*

[258] *See* FINRA March 4 Letter at 15.

[259] *Id.*

[260] *See* Amendment No. 2 at 4.

[261] *Id. See also* Rule 4111(f)(2), as modified by Amendment No. 2. The firm would be required to make any necessary additional deposit promptly at the time of re-designation, or where a hearing is requested pursuant to Proposed Rule 9561, promptly after the Office of Hearing Officers or the NAC issues a written decision under Rule 9559. *Id.*

including U.S. Treasury Securities, serve as a benchmark for stability and liquidity within U.S. securities markets. Thus, the Commission expects that any change in value of these securities should be relatively minimal during the year between any Restricted Firm designation made by FINRA, and a firm's next annual Rule 4111 evaluation—wherein any re-designation of the firm as a Restricted Firm would require the firm to again satisfy any Restricted Deposit Requirement then imposed by FINRA. For these reasons, the Commission finds FINRA's approach is designed to protect investors and the public interest.

Additional Conditions and Restrictions Imposed on Restricted Firms

One commenter stated that proposed Rule 4111.03 would unnecessarily limit FINRA's options for conditioning or restricting the operation high-risk firms.[262] Specifically, the commenter stated that by promulgating an illustrative list of conditions and restrictions that could be imposed on Restricted Firms proposed Rule 4111 would not give FINRA the necessary flexibility to impose obligations on such firms.[263] Instead, this commenter proposed that FINRA should explicitly amend its proposal to make clear that it does not cede any authority to take ''punitive'' action against firms that violate FINRA's rules and the rights of their customers.[264]

FINRA does not take the view that proposed Rule 4111 provides either an express or implied limit on the scope of conditions and restrictions that FINRA could impose on Restricted Firms.[265] Further, FINRA disagrees with the suggestion that ''punitive'' conditions and restrictions would be imposed, and in fact has pointed to proposed Rule 4111(e) as allowing the Department to impose those conditions and restrictions on the ''operations and activities of the member and its associated persons that are necessary or appropriate to address the concerns indicated by the Preliminary Criteria for Identification and protect investors and the public interest.'' [266] However, FINRA acknowledged the concerns raised by the commenter of the need to act, when appropriate, to protect investors from predatory firms, and indicated it ''fully intends to continue using its existing authority to take action against predatory firms that violate FINRA's rules and the rights of customers.'' [267] Further, FINRA does not view anything in proposed Rule 4111 to limit FINRA's authority to bring disciplinary action against firms and registered representatives for violations and ''impose remedial sanctions for violations, including expulsions and bars where appropriate.'' [268]

The Commission agrees with FINRA's assessment that proposed Rule 4111 provides no express or implied limitation on the scope of conditions or restrictions that it may impose as necessary or appropriate to protect investors and the public interest, or both, without seeking to undermine the viability of such firms' ongoing operations. Additionally, the Commission agrees with FINRA's assessment that nothing in proposed Rule 4111 limits its authority to impose remedial sanctions—including expulsions and bars where appropriate—through separate disciplinary actions against firms and registered representatives for violations of FINRA rules. For these reasons, the Commission finds FINRA's approach is designed to protect investors and the public interest.

FINRA Should Impose Specific ''Terms and Conditions'' on Restricted Firms That Circumvent Conditions and Restrictions Imposed by FINRA Under Proposed Rule 4111, or Fail to Significantly Improve Compliance

One commenter argued that FINRA should add to proposed Rule 4111 the general authority to impose ''terms and conditions'' on firms that demonstrate ''significant compliance failures'' to prevent any ''gaming'' of the Preliminary Identification Metric Thresholds.[269] In particular, this commenter expressed support for FINRA using this authority regarding those firms that ''either circumvent the obligations and restrictions placed upon them by proposed Rule 4111 . . . or otherwise refuse to significantly improve their compliance culture.'' [270] FINRA responded that although it is not adopting a ''terms and conditions'' approach currently, it will explore doing so in the future to address any compliance issues.[271] While FINRA recognized that a terms and conditions rule would make it more difficult for firms to evade the identification criteria, FINRA believed that proposed Rule 4111 may offer a better deterrent effect for firms to change their behavior, particularly those firms that may be close to meeting such criteria.[272] For Restricted Firms that evade compliance with the conditions and restrictions imposed on them, FINRA stated that proposed Rule 9561(b) would permit it to ''bring an expedited proceeding against a member that fails to comply with any Rule 4111 Requirements'' that could result in the suspension or cancellation of the firm's membership.[273] Further, FINRA asserted that proposed Rule 4111 already has been designed with features that will make it more difficult to manipulate their Preliminary Identification Metrics, but that it appreciates the support for any further efforts it adopts to curtail such behavior.[274]

The Commission finds the proposal provides for reasonable measures to

[262] *See* Better Markets Letter at 20.

[263] *Id. See* Notice at 78548, providing in Supplementary Material .03 to proposed Rule 4111, Examples of Conditions and Restrictions that FINRA may impose on Restricted Firms other than a Restricted Deposit Requirement.

[264] *See* Better Markets Letter at 20.

[265] *See* FINRA March 4 Letter at 15.

[266] *Id.* at 15–16.

[267] *Id.* at 16.

[268] *Id.* FINRA also stated that it is separately proposing the adoption of Rule 9561(b) to permit it to bring expedited proceedings against any firm that fails to comply with any of the Rule 4111 requirements—and also to seek the imposition of a suspension or cancellation of that firm's membership. *Id.*

[269] *See* Better Markets Letter at 19–20. Better Markets further indicated that, to prevent the gaming of Preliminary Identification Metric Thresholds, it will support ''any reasonable and appropriate amendments or future proposals that will allow FINRA to address firms with substantial compliance issues that cannot be captured by the proposed numerical framework.'' *See* Better Markets Letter at 19–20. As part of the proposal, FINRA considered an approach similar to the Investment Industry Regulatory Organization of Canada's (''IIROC'') ''terms and conditions'' rule to identify a limited number of firms with significant compliance failures using non-public information from FINRA's examination and monitoring process and impose appropriate terms and conditions to encourage these firms' increased compliance. However, it elected not to propose a terms and conditions rule at this time. *See* Notice at 78554–55 (referencing IIROC Consolidated Rule 9208).

[270] *See* Better Markets Letter at 5.

[271] *See* FINRA March 4 Letter at 27. FINRA stated that it had already explained one possible alternative approach it has considered is to adopt an approach similar to the ''terms and conditions'' rule used by IIROC, under IIROC Consolidated Rule 9208. *See* Notice at 78554.

[272] *See* Notice at 78554–55.

[273] *Id.*

[274] *See* FINRA March 4 Letter at 27–28. FINRA stated that particular aspects of proposed Rule 4111 that are designed to curtail efforts by firms to game their Preliminary Identification Metrics include: (1) Defining ''Registered Persons In-Scope'' under proposed Rule 4111(i)(13) to cover all persons registered with the firm for one or more days within the year prior to the Evaluation Date, undercutting any effort to manipulate the outcome by reducing staff immediately before FINRA's annual calculation of that firm's Preliminary Criteria for Identification; and (2) performing the annual calculation of a firm's Preliminary Criteria for Identification at least 30–45 days after the Evaluation Date, ''to account for the lag time between when relevant disclosure events occurred and when they are required to be reported on the Uniform Registration Forms'' to prevent any attempt by a firm to delay Uniform Registration Form submissions to manipulate annual metrics. *Id.*

prevent firms from manipulating their Preliminary Identification Metrics, particularly by adopting checks within proposed Rule 4111 to impede any efforts to distort FINRA's initial calculations of a firm's metrics as of the Evaluation Date. For these reasons, the Commission finds FINRA's approach is designed to protect investors and the public interest.

Economic Impact Analysis

One commenter suggested that although proposed Rule 4111 may increase investor protection above the status quo, FINRA should conduct a ''full economic assessment'' that not only compares proposed Rule 4111 against the ''baseline scenario where FINRA takes no action to monitor or control predatory wolf-pack firms,'' but also compares proposed Rule 4111 against an alternative scenario that ''assumes the improvements offered'' by the commenter.[275] FINRA rejected the suggestion, as it believes that its current economic impact analysis ''thoroughly addresses'' how proposed Rule 4111 addresses the current regulatory need better than reasonable alternatives,[276] and is also ''consistent with the framework for FINRA's approach to economic impact assessments in proposed rulemakings.'' [277] FINRA asserted that the appropriate economic baseline, and the one that it used to evaluate the economic impacts of proposed Rule 4111, is the ''current regulatory framework,'' which includes numerous provisions related to FINRA's current supervision and oversight of member firms.[278] FINRA argued that it has already conducted a thorough economic impact analysis of proposed Rule 4111, and assessed the potential impacts by examining the number of firms that would have met the Preliminary Criteria for Identification between 2013–2017, and the number of ''new'' Registered Person and Member Firm Events in the 2014–2019 period.[279] FINRA believes this assessment provided the ''appropriate information about the economic baseline and effectiveness of the proposed rule in identifying firms that may be associated with additional events after identification.'' [280]

The Commission finds it is both reasonable and appropriate for FINRA to assess the hypothetical results of proposed Rule 4111 using the current regulatory framework as its economic baseline. Doing so enables FINRA to determine the potential impact of the proposal based on existing, recent market data. As any modification of the existing regulatory framework will lead to a response in the market and changes in firm behavior, it is appropriate for FINRA to compare the hypothetical impacts of proposed Rule 4111 against this pre-existing, recent market data.

In sum, the Commission finds that proposed Rule 4111 would provide an important new tool to FINRA in identifying and imposing conditions or restrictions on those member firms with outlier-level disclosure events relative to their similarly sized peers. In addition, the Commission finds that proposed Rule 4111 takes a reasonable and appropriate approach to incentivizing better behavior from such firms for the protection of investors and the public interest. Further, the Commission finds that the proposed Rule 4111 process provides firms with ample opportunity to affect the ultimate outcome of FINRA's decisions, including an extensive Consultation process—that will provide member firms who would be initially identified by FINRA with opportunities to demonstrate why they should not actually be designated as a Restricted Firm, or thereafter why they should not be subject to the maximum Restricted Deposit Requirement or other operational conditions or restrictions—along with avenues to seek further review if necessary. Moreover, by establishing different thresholds for identification across seven different firm sizes, proposed Rule 4111 should help reduce the possibility that the rule becomes overly burdensome on any group of firms based solely on their size or resources.

Accordingly, the Commission finds proposed Rule 4111 is reasonably designed to protect investors by helping incentivize compliant behavior from those firms exhibiting higher levels of disclosure events, while effectively tailoring the review process to mitigate the burdens on member firms throughout that process. The Commission further supports FINRA's commitment to working with individual state securities regulators to share relevant information and observes its commitment to further consider public disclosure of a firm's designation as a Restricted Firm by filing proposed amendments to Rule 8312 that would require FINRA to identify on BrokerCheck those member firms or former member firms that are designated as Restricted Firms pursuant to proposed Rules 4111 and 9561.

Proposed Rule 9561 (Procedures for Regulating Activities Under Rule 4111) and Amendments to Rule 9559 To Implement the Requirements of Proposed Rule 4111

The proposal to adopt new Rule 9561 and to amend Rule 9559 to establish new, expedited proceedings to enable firms to challenge any requirements imposed by the Department under the Rule 4111 process will help provide for both the fair administration of Rule 4111, and faster remediation of instances of non-compliance. Proposed new Rule 9561 is designed to afford firms with an opportunity to address such matters through timely notice of FINRA's decision to impose obligations, or determination that a firm is failing to comply with such obligations, and the ability to thereafter request a hearing regarding such a decision or determination. Correspondingly, the proposed amendments to Rule 9559 would assist in the administration of such requested hearings.

One commenter suggested that the expedited proceeding rule be amended to include a requirement ''that each member firm be given notice of the Preliminary Identification Metrics.'' [281] FINRA declined this suggestion, asserting that the purpose of the proposed rule, ''is to establish procedures for when the Department determines, after the Rule 4111 process,

[275] *See* Better Markets Letter at 13. As discussed more fully above, the Commission considered this commenter's recommended alternatives and has concluded that the proposed rule change represents a reasonable approach to identifying firms that pose the greatest risk to investors and imposing obligations on those firms to encourage them to change their behavior.

[276] *See* FINRA March 4 Letter at 26. For example, FINRA indicated that it ''considered several alternative specifications to the numeric threshold based-approach, including alternative categories of reported disclosure events and metrics, alternative counting criteria for the number of reported events or conditions, and alternative time periods over which the events or conditions are counted.'' *See* FINRA March 4 Letter at 26 note 70.

[277] *Id. See* Framework Regarding FINRA's Approach to Economic Impact Assessment for Proposed Rulemaking (Sept. 2013), available at *https://www.finra.org/sites/default/files/Economic%20Impact%20Assessment_0_0.pdf.*

[278] *See* FINRA March 4 Letter at 25. Specifically, FINRA highlighted its rules pertaining to FINRA supervision, the membership application process, proceedings for statutory disqualification and other disciplinary proceedings as to firms and registered representatives, along with FINRA's current ''risk monitoring and focused examination programs . . . designed to monitor and address the risks posed by high-risk firms and high-risk brokers.'' *Id.*

[279] *Id.* FINRA indicated that economic analysis ''demonstrated that for firms that would have met the Preliminary Criteria for Identification in the years 2013–2017, those firms were associated with 2,995 'new' Registered Person and Member Firm Events in the Post-Identification Period . . . [and] also demonstrated that such firms had between 6.1 and 19.9 times more ''new'' disclosure events (per registered person) in the years after identification than other firms registered during the 2013–2017 period.'' *See* FINRA March 4 Letter at 25–26.

[280] *See* FINRA March 4 Letter at 26.

[281] *See* Harvin Letter at 1.

that a firm is a Restricted Firm and seeks to impose requirements, conditions, or restrictions on the Restricted Firm.'' [282] Further, FINRA asserted that the proposed expedited proceeding rule is not intended to provide any notice of the Preliminary Identification Metrics to firms other than those few that are deemed to be Restricted Firms.[283] FINRA believes that the commenter may have instead been suggesting that it provide each firm with notice of its own Preliminary Identification Metrics under proposed Rule 4111, and indicated that if this is the case, FINRA reiterates its commitment to providing firms with compliance tools for the Rule 4111 process.[284]

The expedited proceedings process proposed by FINRA will help afford firms with fair procedures to contest such decisions and determinations. The Commission also agrees with FINRA that disclosure of the Preliminary Identification Metrics to member firms does not fall within the purpose of the expedited proceedings rule.[285] Accordingly, the Commission finds that the proposed new Rule 9561 and proposed amendments to existing Rule 9559 will help facilitate the effective administration of proposed new Rule 4111, while providing a fair appeal and review process for firms seeking to challenge FINRA's decisions and determinations thereunder. For these reasons, the Commission finds FINRA's approach is designed to protect investors and the public interest.

However, the Commission also supports and encourages FINRA's willingness to regularly reassess the performance of the Rule 4111 process in practice to continue to identify what further measures, if any, are necessary and appropriate to guard against such manipulation by firms.

IV. Conclusion

It is therefore ordered pursuant to Section 19(b)(2) of the Exchange Act [286] that the proposed rule change (SR–FINRA–2020–041), as modified by Amendment No. 1 and Amendment No. 2, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[287]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–16671 Filed 8–4–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34346]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

July 30, 2021.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of July 2021. A copy of each application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the relevant applicant with a copy of the request by email, if an email address is listed for the relevant applicant below, or personally or by mail, if a physical address is listed for the relevant applicant below. Hearing requests should be received by the SEC by 5:30 p.m. on August 24, 2021, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary at *Secretarys-Office@sec.gov*.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov*.

FOR FURTHER INFORMATION CONTACT: Shawn Davis, Assistant Director, at (202) 551–6413 or Chief Counsel's Office at (202) 551–6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE, Washington, DC 20549–8010.

AIP Macro Registered Fund A [File No. 811–22682]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On May 17, 2019, August 28, 2019, December 20, 2019, April 2, 2020, and July 1, 2020, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of $67,000 incurred in connection with the liquidation were paid by the applicant. Applicant also has retained $67,000 for the purpose of paying outstanding accrued liabilities.

Filing Dates: The application was filed on October 14, 2020 and amended on July 27, 2021.

Applicant's Address: Jonathan.Gaines@dechert.com.

BNY Mellon Growth and Income Fund, Inc. [File No. 811–06474]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Nationwide Dynamic U.S. Growth Fund, a series of Nationwide Mutual Funds, and on December 11, 2019 made a final distribution to its shareholders. Expenses of $199,671.76 incurred in connection with the reorganization were paid by the applicant's investment adviser and the acquiring fund's investment adviser.

Filing Dates: The application was filed on April 5, 2021 and amended on June 9, 2021, July 16, 2021, and July 22, 2021.

Applicant's Address: peter.sullivan@bnymellon.com.

FSI Low Beta Absolute Return Fund [811–22595]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant currently has six beneficial owners and will continue to operate as a private investment fund in reliance on Section 3(c)(1) of the Act.

Filing Dates: The application was filed on May 14, 2021 and amended on July 27, 2021.

Applicant's Address: tsheehan@bernsteinshur.com.

Variable Account J of Lincoln Life Assurance Co of Boston [File No. 811–08269]

Summary: Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. The applicant is not making and does not presently propose to make a public offering of its securities, and will continue to operate

[282] *See* FINRA March 4 Letter at 25.

[283] *Id.*

[284] *Id. See supra* note 152 (addressing FINRA's commitment to providing additional guidance and resources to member firms to assist in satisfying their compliance burdens under the proposed rule).

[285] Separate comments addressing whether FINRA should otherwise disclose to firms their Preliminary Identification Metrics across all six categories is discussed above in ''Resources to assist Member Firms with Compliance.''

[286] 15 U.S.C. 78s(b)(2).

[287] 17 CFR 200.30–3(a)(12).

in reliance on section 3(c)(1) of the 1940 Act.

Filing Dates: The application was filed on February 16, 2021 and amended on July 8, 2021.

Applicant's Address: Brad.Rodgers@protective.com.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–16658 Filed 8–4–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92535; File No. SR–BX–2021–032]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Options 4 Listing Rules

July 30, 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 July 20, 2021, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend BX's Rules at Options 2, Section 5, Market Maker Quotations; Options 4, Options Listing Rules; and Options 4A, Section 12, Terms of Index Options Contracts. This proposal also reserves Options 4C. Finally, the Exchange proposes to reserve some sections with the Equity Rules.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/bx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Options 4, Options Listing Rules, to conform BX's Options 4 Listing Rules to Nasdaq ISE, LLC's (''ISE'') Options 4 Listing Rules. The Exchange also proposes to amend BX Options 4A, Section 12, Terms of Index Options Contracts and reserve BX Options 4C. Finally, the Exchange also proposes to amend Options 2, Section 5, Market Maker Quotations to relocate rule text concerning bid/ask differentials for long-term options contracts from BX Options 4 and Options 4A, similar to ISE.

The Exchange also proposes a technical amendment to General 9, Section 51, Research Analysts and remove stray periods through Options 4. Each rule change is described below.

Options 4, Options Listing Rules

Conforming BX's Options 4 Listing Rules to that of ISE Options 4 is part of the Exchange's continued effort to promote efficiency in the manner in which it administers its rules. The Exchange proposes to amend these rules to conform to ISE Options 4 Rules.

Section 1. Designation of Securities

The Exchange proposes to replace the current rule text of Options 4, Section 1 which states,

Securities traded on the Exchange are options contracts, each of which is designated by reference to the issuer of the underlying security or name of underlying foreign currency, expiration month or expiration date, exercise price and type (put or call).

with the following rule text,

The Exchange trades options contracts, each of which is designated by reference to the issuer of the underlying security, expiration month or expiration date, exercise price and type (put or call).

The Exchange proposes to amend this sentence within Options 4, Section 1 to conform to ISE Options 4, Section 1. The revised wording does not substantively amend the paragraph.

Section 2. Rights and Obligations of Holders and Writers

The Exchange proposes to replace the current rule text of Options 4, Section 1 which states,

Subject to the provisions of this Chapter, the rights and obligations of holders and writers of option contracts of any class of options dealt in on the Exchange shall be as set forth in the Rules of the Clearing Corporation.

with the following rule text,

The rights and obligations of holders and writers shall be as set forth in the Rules of the Clearing Corporation.

The Exchange proposes to amend this sentence within Options 4, Section 2 to conform to ISE Options 4, Section 1. The revised wording does not substantively amend the paragraph.

Section 3. Criteria for Underlying Securities

Options 4, Section 3 of the Options Listing Rules is being updated to conform to ISE Options 4, Section 3.

The Exchange proposes to amend Options 4, Section 3(a)(i) and (ii) to conform to ISE Options 4, Section 3(a)(1) and (2) by changing the ''i. and ii.'' to ''(1) and (2),'' respectively. Also, the Exchange proposes to remove the phrase ''with the SEC'' within current BX Options 4, Section 3(a)(i). These amendments are non-substantive.

The Exchange proposes to amend Options 4, Section 3(b) to reword the rule text to ISE Options 4, Section 3(b). The Exchange proposes to replace the current rule text of Options 4, Section 3(b) which states,

In addition, the Exchange shall from time to time establish standards to be considered in evaluating potential underlying securities for the Exchange options transactions. There are many relevant factors which must be considered in arriving at such a determination, and the fact that a particular security may meet the standards established by the Exchange does not necessarily mean that it will be selected as an underlying security. The Exchange may give consideration to maintaining diversity among various industries and issuers in selecting underlying securities. Notwithstanding the foregoing, an underlying security will not be selected unless:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

with the following rule text,

In addition, the Exchange shall from time to time establish guidelines to be considered in evaluating potential underlying securities for Exchange options transactions. There are many relevant factors which must be considered in arriving at such a determination, and the fact that a particular security may meet the guidelines established by the Exchange does not necessarily mean that it will be selected as an underlying security. Further, in exceptional circumstances an underlying security may be selected by the Exchange even though it does not meet all of the guidelines. The Exchange may also give consideration to maintaining diversity among various industries and issuers in selecting underlying securities. Notwithstanding the foregoing, however absent exceptional circumstances, an underlying security will not be selected unless:

The new rule text permits the Exchange, in exceptional circumstances, to select an underlying security even though it does not meet all of the guidelines. Today, the Exchange may establish guidelines to be considered in evaluating potential underlying securities for Exchange options transactions. Providing BX with the same ability to select an underlying security even though it does not meet all of the guidelines as ISE will permit BX to list similar options as ISE for competitive purposes. The proposal to replace the term ''standards'' with ''guidelines'' within paragraph 3(b) is non-substantive.

The Exchange is amending numbering within Options 4, Section 3(b) as well as removing extraneous rule text within current Options 4, Section 3(b)(iii), namely ''or Rules thereunder.'' The Exchange proposes to relocate Options 4, Section 3(k) into new Options 4, Section 3(b)(6) without change. This would align BX Options 4, Section 3(b)(6) with ISE Options 4, Section 3(b)(6). This provision states,

Notwithstanding the requirements set forth in Paragraphs 1, 2, 4 and 5 above, the Exchange may list and trade an options contract if (i) the underlying security meets the guidelines for continued approval in Options 4, Section 4; and (ii) options on such underlying security are traded on at least one other registered national securities exchange.

The Exchange proposes to renumber BX Options 4, Section 3(c) and make minor amendments to rule text within current Options 4, Section 3(c)(ii), (iii), (iv) and (v), Sections 3(d), 3(f) and 3(g) to conform the rule text to ISE Options 4, Section 3(c)(ii), (iii), (iv) and (v), Sections 3(d), 3(f) and 3(g). The proposed changes are non-substantive.[3]

The Exchange proposes to amend an ''up'' to ''on'' within BX Options 4, Section 3(d). This proposed change is non-substantive.

The Exchange proposes non-substantive amendments to amend BX Options 4, Section 3(f) and (g)[4] in addition to conforming the numbering to ISE Options 4, Section 3(f) and (g).

The Exchange proposes to relocate current BX Options 4, Section 3(h) describing a market information sharing agreement to proposed BX Options 4, Section 3(i). This text is currently located within ISE rules at Options 4, Section 3(i).

Current BX Options 4, Section 3(i) is being re-lettered as proposed Options 4, Section 3(h). The Exchange proposes to add the defined term ''Financial Instruments'' within Options 4, Section 3(h) and also account for money market instruments, U.S. government securities and repurchase agreements, defined by the term ''Money Market Instruments'' similar to ISE Options 4, Section 3(h). The addition of money market instruments, U.S. government securities and repurchase agreements as securities deemed appropriate for options trading will make clear that these agreements are included in the acceptable securities. The Exchange notes that this rule text is clarifying in nature and will more explicitly provide for money market instruments, U.S. government securities and repurchase agreements as a separate category from what is being defined as ''Financial Instruments'' with this proposal. Today, these instruments are eligible as securities deemed appropriate for options trading. The remainder of the changes are non-substantive in nature and simply conform the location of words similar to ISE.[5] The Exchange also proposes to remove the following products from Options 4, Section 3(h): The ETFS Silver Trust, the ETFS Palladium Trust, the ETFS Platinum Trust or the Sprott Physical Gold Trust. The Exchange no longer lists these products and proposes to remove them the products from its listing rules. The Exchange will file a proposal with the Commission if it determines to list these products in the future.

The Exchange will file a proposal with the Commission if it determines to list these products in the future. Finally, the Exchange proposes to amend Options 4, Section 3(h) by removing the rule text at the end of the paragraph which provides, ''all of the following conditions are met.'' Paragraph (h) would simply end with ''provided that:'' and direct market participants to subparagraphs (1) and (2).

The Exchange proposes to capitalize ''the'' at the beginning of Options 4, Section 3(h)(1) and remove ''; and'' at the end of the paragraph and instead at a period so that subparagraphs (1) and (2) are not linked, but rather read independently. Today, Options 4, Section 3(h)(1) applies to all Exchange-Traded Fund Shares. Similar to ISE Options 4, Section 3(h)(2), the Exchange proposes to clarify that Options 4, Section 3(h)(2) applies to only international or global Exchange-Traded Fund Shares. Specifically, the Exchange proposes to amend Options 4, Section 3(h)(2) to provide, ''Exchange-Traded Fund Shares based on international or global indexes, or portfolios that include non-U.S. securities, shall meet the following criteria.'' ISE Options 4, Section 3(h) has the identical text. Proposed Options 4, Sections 3(h) generally concerns securities deemed appropriate for options trading. The proposed new rule text adds language stating that subparagraph (h)(2) of Options 4, Section 3 applies to the extent the Exchange-Traded Fund Share is based on international or global indexes, or portfolios that include non-U.S. securities. This language is intended to serve as a guidepost and clarify that (1) subparagraph (h)(2) does not apply to an Exchange-Traded Fund Shares based on a U.S. domestic index or portfolio, and (2) subparagraph (h)(2) includes Exchange-Traded Fund Shares that track a portfolio and do not track an index.

The Exchange proposes to amend Options 4, Section 3(h)(2)(A) to remove the phrase ''for series of portfolio depositary receipts and index fund shares based on international or global indexes,''. Today, Options 4, Section

[3] The proposed changes replace the word ''standards'' with ''guidelines,'' insert ''Options 4'' before ''Section 3,'' and remove 2 extraneous uses of ''this.'' Similar replacements are made throughout current Options 4, Section 3(c), including amending a capitalized ''Paragraph.''

[4] The proposed changes replace the word ''standards'' with ''guidelines,'' insert ''Rule'' instead of ''Section 3,'' and remove an unnecessary ''or.''

[5] The amendment to current Options 4, Section 3(i)(B)(4) to add, ''. . . which the Exchange-Traded Fund shares are based . . .'' makes clear that this text applies to Exchange-Traded Fund shares. Also the word ''indexes'' is being changes to ''indices'' within this paragraph and ''similar entity'' is being relocated within the paragraph.

3(h), subparagraphs (h)(1)[6] and (h)(v)[7] permit the Exchange to list options on Exchange-Traded Fund Shares based on generic listing standards for portfolio depositary receipts and index fund shares without applying component based requirements in subparagraphs (h)(2)(B)–(D). By removing the proposed rule text, the Exchange would make clear that subparagraph (h)(2)(A) applies to Exchange-Traded Fund Shares based on international or global indexes, or portfolios that include non-U.S. securities, that are listed pursuant to generic listing standards and comply with Options 4, Section 3(h) and subparagraph (h)(1). The identical rule text exists within ISE Options 4, Section 3(h)(2)(A).

The Exchange also proposes to amend the term ''comprehensive surveillance agreement'' within Options 4, Section 3(h)(2) (A)–(D) to instead provide ''comprehensive surveillance sharing agreement.'' This amendment will bring greater clarity to the term. Further, the Exchange proposes to add the phrase ''if not available or applicable, the Exchange-Traded Fund's'' within Options 4, Section 3(h)(2)(B), (C), and (D) to clarify that when component securities are not available, the portfolio of securities upon which the Exchange-Traded Fund Share is based can be used instead. The Exchange notes that ''not available'' is intended for cases where the Exchange does not have access to the index components, in those cases the Exchange would look to the portfolio components. The term ''not applicable'' is intended if the fund is active and does not track an index and only the portfolio is available. These amendments will conform the rule text to ISE Options 4, Section 3(h)(2)(A)–(D).

The Exchange also proposes to wordsmith Options 4, Section 3(h)(2)(B) to amend the phrase to provide, ''any non-U.S. component securities of an index on which the Exchange-Traded Fund Shares are based or if not available or applicable, the Exchange-Traded Fund's portfolio of securities that are not subject to comprehensive surveillance sharing agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio;''. Finally, the Exchange proposes to wordsmith Options 4, Section 3(h)(2)(C) and (D) to relocate the phrase ''on which the Exchange-Traded Fund Shares are based'' and add ''or portfolio'' to bring greater clarity to the rule text by conforming the rule text of (C) and (D) to the language within (B). The Exchange believes that the revised wording will bring greater clarity to the rule text and conform the rule text to ISE Options 4, Section 3(h)(2)(B)–(D). The Exchange proposes a non-substantive technical amendment to Options 4, Section 3(C)(2)(A)(ii) to correct a typographical error by changing a ''than'' to a ''that.'' The Exchange proposes a non-substantive technical amendment to Options 4, Section 3(h)(1) to change ''In'' to ''in.''

As noted above BX Options 4, Section 3(h), which describes a market information sharing agreement, was relocated to proposed Options 4, Section 3(i), similar to ISE Options 4, Section 3(i).

The Exchange proposes to amend Options 4, Section 3(j) to conform the rule text to ISE Options 4, Section 3(j). The proposed changes are non-substantive.[8]

As noted, above, Options 4, Section 3(k) was relocated to new Options 4, Section 3(b)(6).

The Exchange proposes to remove the header ''Index-Linked Securities'' within Options 4, Section 3(l), and re-letter Options 4, Section 3(l)(i) as Section 3(k). Proposed Options 4, Section 3(k) has non-substantive numbering and citation amendments.

Options 4, Section 3(m) is being removed as BX does not list U.S. Dollar-Settled Foreign Currency Options.

Section 4. Withdrawal of Approval of Underlying Securities

The Exchange proposes to remove the first sentence of Options 4, Section 4(a), which provides, ''If put or call options contracts with respect to an underlying security are approved for listing and trading on the Exchange, such approval shall continue in effect until such approval is affirmatively withdrawn by the Exchange.'' This sentence is unnecessary as the second sentence within Options 4, Section 4(a) makes clear that approval continues until it does not meet the requirements. Also, the Exchange proposes to add the following text to the end of this paragraph: ''When all options contracts with respect to any underlying security that is no longer approved have expired, the Exchange may make application to the SEC to strike from trading and listing all such options contracts.'' This text makes clear that options contracts that are no longer approved will not be listed. The remainder of the changes to Options 4, Section 4(a) are non-substantive. This proposal is intended to conform BX's Options 4, Section 4(a) with ISE Options 4, Section 4(a).

The Exchange proposes to amend Options 4, Section 4(b) to add ''Absent exceptional circumstances . . .'' at the beginning of the section. This phrase adds clarity to the rule text. The remainder of the numbering changes as well as capitalization are non-substantive and intended to conform BX's Options 4, Section 4(b) with ISE Options 4, Section 4(b). The Exchange also proposes to remove reserved sections.

Options 4, Section 4(c), which is currently reserved, is proposed to be deleted and current Options 4, Section 4(d) is proposed to be re-lettered as ''c''. Minor non-substantive conforming changes are proposed to current Options 4, Section 4(d)–(f).[9]

The Exchange proposes to amend current Options 4, Section 4(h) to re-letter it ''g'' and replace ''security'' with ''Exchange-Traded Fund Shares'' similar to ISE Options 4, Section 4(g). The Exchange proposes to add halt or suspension as other circumstances in which the Exchange shall not open for trading any additional series of option contracts of the class to clarify that this scenario may also exist. The other

[6] Subsection (h)(i) concerns passive Exchange-Traded Fund Shares. Subsection (h)(1) provides, ''represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that hold portfolios of securities and/or financial instruments, including, but not limited to, stock index futures contracts, options on futures, options on securities and indices, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse repurchase agreements (the ''Financial Instruments''), and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the ''Money Market Instruments'') comprising or otherwise based on or representing investments in broad-based indexes or portfolios of securities and/or Financial Instruments and Money Market Instruments (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities and/or Financial Instruments and Money Market Instruments).''

[7] Subsection (h)(v) concerns active Exchange-Traded Fund Shares. Subsection (h)(v) Provides, ''represents an interest in a registered investment company (''Investment Company'') organized as an open-end management company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies, which is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value (''NAV''), and when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV (''Managed Fund Share'').

[8] The amendment to current Options 4, Section 3(j) replace the word ''standards'' with ''guidelines.''

[9] The Exchange proposes to remove ''Section 4'', lowercase the term ''Customer,'' add ''options 4'' and remove ''thereof'' within Options 4, Section 4(d)–(f).

proposed changes to current Options 4, Section 4(h) are non-substantive.[10]

The Exchange proposes to amend current Options 4, Section 4(i) to re-letter it ''h'' and add ''Absent exceptional circumstances, securities . . .'' at the beginning of the section. This phrase adds clarity to the rule text. The remainder of the numbering changes are non-substantive [11] and conform current BX's Options 4, Section 4(i) with ISE Options 4, Section 4(h).

The Exchange proposes to adopt new Options 4, Section 4(i) similar to ISE, Options 4, Section 4(i). The proposed new section would provide,

For Holding Company Depositary Receipts (HOLDRs), the Exchange will not open additional series of options overlying HOLDRs (without prior Commission approval) if:

(1) The proportion of securities underlying standardized equity options to all securities held in a HOLDRs trust is less than 80% (as measured by their relative weightings in the HOLDRs trust); or

(2) less than 80% of the total number of securities held in a HOLDRs trust underlie standardized equity options.

Current Options 4, Section 4 does not describe the withdrawal of HOLDRs. This new text, similar to ISE, would provide for provisions wherein the Exchange will not open additional series of options overlying HOLDRs.

The Exchange proposes to delete current Options 4, Section 4(j), which is reserved, as well as the lettering for Options 4, Section 4(k) which states, ''Index Linked Securities.'' The next existing paragraph is proposed to be Options 4, Section 4(j). The remainder of the numbering changes to this section are non-substantive and conform proposed Options 4, Section 4(j) with ISE Options 4, Section 4(j).

The Exchange proposes to remove Options 4, Section 4(l) related to inadequate volume delisting. To remain competitive with other options markets, the Exchange proposes to adopt the same obligations for continuance of trading.[12] Also, pursuant to proposed new Options 4, Section 5(e) the Exchange will announce securities that have been withdrawn. With this proposal, the Exchange would eliminate the requirement that an option must be trading for more than 6 months. The Exchange notes that this condition is not present on other options markets such as ISE and Cboe Exchange, Inc. (''Cboe'').[13] This also applies to the requirement that the average daily volume of the entire class of options over the last six (6) month period was less than twenty (20) contracts. The Exchange notes that BX's requirements are different than other options markets. To remain competitive the Exchange proposes to adopt the same standards as ISE and Cboe to remain competitive in order that it may list options similar to other markets.

While the Exchange may in the future determine to delist an option that is singly listed, the Exchange proposes to remove the rule text which provides that ''If the option is singly listed only on the Exchange, the Exchange will cease to add new series and may delist the class of options when there is no remaining open interest.'' This rule text does not exist on ISE and Cboe. The Exchange today provides notification of a delisting to all Participants so therefore it is not necessary to retain the provisions within (b)(2). Also, proposed new Options 4, Section 4(e) establishes the rules by which the Exchange will announce securities that have been withdrawn. The rule text within Options 4, Section 4(b), as amended to conform to ISE rule text, will continue to govern the continued approval of options on the Exchange.

The reference to Options 4, Section 4(m) is proposed to be deleted. The provision that is currently Options 4, Section 4(m) is proposed to become proposed Supplementary Material .01 to Options 4, Section 6 with a minor non-substantive change to the current rule text to capitalize ''rules.''

Section 5. Series of Options Contracts Open for Trading

The Exchange proposes to update citations within Options 4, Section 5 to reflect the replacement of current rule text. These changes are non-substantive.

Section 7. Adjustments

The Exchange proposes non-substantive amendments to Options 4, Section 7. The current text states,

Options contracts shall be subject to adjustments in accordance with the Rules of the Clearing Corporation. The Exchange will announce adjustments, and such changes will be effective for all subsequent transactions in that series at the time specified in the announcement.

The Exchange proposes to instead provide,

Options contracts shall be subject to adjustments in accordance with the Rules of the Clearing Corporation. When adjustments have been made, the Exchange will announce that fact, and such changes will be effective for all subsequent transactions in that series at the time specified in the announcement.

The proposal conforms BX Options 4, Section 7 with ISE Options 4, Section 7.

Section 8. Long-Term Options Contracts

The Exchange proposes to conform the BX Options 4, Section 8 to ISE Options 4, Section 8. The proposed changes are non-substantive. BX's current rule text provides that with respect to long-term options series, bid/ask differential rules do not apply. The Exchange proposes to add this rule text to Options 4, Section 5(d)(2) within new ''A'' as the bid/ask differential requirements can be found within this rule. The Exchange also proposes to add a new sentence to Options 4, Section 8(a) to refer to Options 4, Section 5(d)(2)(A), which states, ''Bid/ask differentials for long-term options contracts are specified within Options 3, Section 5(d)(2)(A)'' for ease of reference.

Section 9. Limitation on the Liability of Index Licensors for Options on Fund Shares

The Exchange proposes to remove current Options 4, Section 9, U.S. Dollar-Settled Foreign Currency Option Closing Settlement Value as BX does not list U.S. Dollar-Settled Foreign Currency Options.

The Exchange proposes to adopt a new Section 9, titled ''Limitation on the Liability of Index Licensors for Options on Fund Shares'' identical to ISE

[10] The Exchange proposes to amend Options 4, Section 4(h) to add ''Options 4'' and replace ''Section 4'' with ''Rule;'' and replace an ''or'' with an ''and.''

[11] The term Options 4 is being relocated within the proposed new paragraph (h). Also, the term ''Rule'' is being used within proposed new paragraph (h)(1) instead of ''Section 4,'' and ''Section 3.'' ''Upon annual review'' is being removed from proposed new paragraph (h)(2).

[12] Options 4, Section 4(b), as amended, establishes requirements for continued listing, similar to ISE. *See* proposed Phlx Options 3, Section 4(b) which provides, ''Absent exceptional circumstances, an underlying security will not be deemed to meet the Exchange's requirements for continued approval whenever any of the following occur: (1) There are fewer than 6,300,000 shares of the underlying security held by persons other than those who are required to report their security holdings under Section 16(a) of the Exchange Act. (2) There are fewer than 1,600 holders of the underlying security. (3) The trading volume (in all markets in which the underlying security is traded) has been less than 1,800,000 shares in the preceding twelve (12) months. (4) The underlying security ceases to be an ''NMS stock'' as defined in Rule 600 of Regulation NMS under the Exchange Act. (5) If an underlying security is approved for options listing and trading under the provisions of Options 4, Section 3(c), the trading volume of the Original Security (as therein defined) prior to but not after the commencement of trading in the Restructure Security (as therein defined), including ''when-issued'' trading, may be taken into account in determining whether the trading volume requirement of (3) of this paragraph (b) is satisfied.''

[13] *See* ISE Options 4, Section 4 and Cboe Rule 4.4.

Options 4, Section 9. ISE and Cboe have similar provisions.[14] The new rule would provide,

(a) The term ''index licensor'' as used in this Rule refers to any entity that grants the Exchange a license to use one or more indexes or portfolios in connection with the trading of options on Exchange-Traded Fund Shares (as defined in Options 4, Section 3(h)).

(b) No index licensor with respect to any index or portfolio underlying an option on Exchange-Traded Fund Shares traded on the Exchange makes any warranty, express or implied, as to the results to be obtained by any person or entity from the use of such index or portfolio, any opening, intra-day or closing value therefor, or any data included therein or relating thereto, in connection with the trading of any option contract on Exchange-Traded Fund Shares based thereon or for any other purpose. The index licensor shall obtain information for inclusion in, or for use in the calculation of, such index or portfolio from sources it believes to be reliable, but the index licensor does not guarantee the accuracy or completeness of such index or portfolio, any opening, intra-day or closing value therefor, or any data included therein or related thereto. The index licensor hereby disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to any such index or portfolio, any opening, intra-day or closing value therefor, any data included therein or relating thereto, or any option contract on Exchange-Traded Fund Shares based thereon. The index licensor shall have no liability for any damages, claims, losses (including any indirect or consequential losses), expenses or delays, whether direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the person's use of such index or portfolio, any opening, intra-day or closing value therefor, any data included therein or relating thereto, or any option contract on Exchange-Traded Fund Shares based thereon, or arising out of any errors or delays in calculating or disseminating such index or portfolio.

[14] *See* Securities Exchange Act Release No. 45817 (April 24, 2002), 67 FR 21785 (May 1, 2002) (SR–CBOE–2002–19) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Amend Its Rules Relating to the Limitation of Liability for Index Licensors) and 14729 (March 19, 2003), 68 FR 14729 (March 26, 2003) (SR–ISE–2003–09) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange, Inc., Relating to Limiting the Liability of Index Licensors for Options on Fund Shares).

Proposed Section 9(a) defines the term ''index licensor'' as any entity that grants the Exchange a license to use one or more indexes or portfolios in connection with the trading of options on Exchange-Traded Fund Shares (as defined in Options 4, Section 3(h)).

Proposed Options 4, Section 9(b) provides that no index licensor with respect to any index or portfolio underlying an option on Exchange-Traded Fund Shares traded on the Exchange makes any warranty, express or implied, as to the results to be obtained by any person or entity from the use of such index or portfolio, any opening, intra-day or closing value therefor, or any data included therein or relating thereto, in connection with the trading of any option contract on Exchange-Traded Fund Shares based thereon or for any other purpose. The index licensor will obtain information for inclusion in, or for use in the calculation of, such index or portfolio from sources it believes to be reliable, but the index licensor does not guarantee the accuracy or completeness of such index or portfolio, any opening, intra-day or closing value therefor, or any data included therein or related thereto. The index licensor disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to any such index or portfolio, any opening, intra-day or closing value therefor, any data included therein or relating thereto, or any option contract on Exchange-Traded Fund Shares based thereon. The index licensor will have no liability for any damages, claims, losses (including any indirect or consequential losses), expenses or delays, whether direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the person's use of such index or portfolio, any opening, intra-day or closing value therefor, any data included therein or relating thereto, or any option contract on Exchange-Traded Fund Shares based thereon, or arising out of any errors or delays in calculating or disseminating such index or portfolio.

Section 10. Back-Up Trading Arrangements

The Exchange proposes to add a new rule to Options 4, Section 10, titled ''Back-Up Trading Arrangements.'' Section 10 is currently reserved. This proposed rule is identical to ISE Options 4, Section 10.[15] This rule would permit BX to enter into arrangements with one or more other exchanges (each a ''Back-up Exchange'') to permit BX and its Participants to use a portion of a Back-up Exchange's facilities to conduct the trading of BX exclusively listed options in the event of a Disabling Event, and permits BX to provide trading facilities at BX for another exchange's exclusively listed options if that exchange (a ''Disabled Exchange'') is prevented from trading due to a Disabling Event. Also, the proposed rule would permit BX to enter into arrangements with a Back-up Exchange to provide for the listing and trading of BX singly listed options by the Back-up Exchange if BX's facility becomes disabled, and conversely provide for the listing and trading by BX of the singly listed options of a Disabled Exchange.

The back-up trading arrangements contemplated by Options 4, Section 10 represent BX's immediate plan to ensure that its exclusively listed and singly listed options will have a trading venue if a catastrophe renders its primary facility inaccessible or inoperable.

Section 10(a) describes the back-up trading arrangements that would apply if BX were the Disabled Exchange. An ''exclusively listed option'' is defined within Section 10(a)(1)(i) to mean an option that is listed exclusively by an exchange (because the exchange has an exclusive license to use, or has proprietary rights in, the interest underlying the option). Proposed paragraph(a)(1)(ii) provides that the facility of the Back-up Exchange used by BX to trade some or all of BX's exclusively listed options will be deemed to be a facility of BX, and such option classes shall trade as listings of BX. Since the trading of BX exclusively listed options will be conducted using the systems of the Back-up Exchange, proposed paragraph (a)(1)(iii) provides that the trading of BX listed options on BX's facility at the Back-up Exchange shall be conducted in accordance with the rules of the Back-up Exchange, and proposed paragraph (a)(1)(iv) provides that the Back-up Exchange has agreed to perform the related regulatory functions with respect to such trading, in each case except as BX and the Back-up Exchange may specifically agree otherwise. The Back-up Exchange rules that govern trading on BX's facility at the Back-up Exchange shall be deemed to be BX rules for purposes of such trading. Proposed paragraph (a)(1)(v) provides that BX shall have the right to designate its members that will be authorized to trade BX exclusively listed options on BX's facility at the Back-up Exchange and, if applicable, its member(s) that will be a BX Market

[15] *See* Securities Exchange Act Release No. 71092 (December 17, 2013), 78 FR 77510 (December 23, 2013) (SR–ISE–2013–61) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Back-Up Trading Arrangements).

Maker in those options.[16] If the Back-up Exchange is unable to accommodate all BX Participants that desire to trade on BX's facility at the Back-up Exchange, BX may determine which Participants shall be eligible to trade at that facility by considering factors such as whether the Participant is a BX Market Maker in the applicable product(s), the number of contracts traded by the member in the applicable product(s), market performance, and other factors relating to a member's contribution to the market in the applicable product(s). Under proposed paragraph (a)(1)(vi), Participants of the Back-up Exchange shall not be authorized to trade in any BX exclusively listed options, except that (i) BX may deputize willing brokers of the Back-up Exchange as temporary BX Participants to permit them to execute orders as brokers in BX exclusively listed options traded on BX's facility at the Back-up Exchange, and (ii) the Back-up Exchange has agreed that it will, at the instruction of BX, select members of the Back-up Exchange that are willing to be deputized by BX as temporary BX Participants authorized to trade BX exclusively listed options on BX's facility at the Back-up Exchange for such period of time following a Disabling Event as BX determines to be appropriate, and BX may deputize such members of the Back-up Exchange as temporary BX Participants for that purpose.

The foregoing exceptions would permit members of the Back-up Exchange to trade BX exclusively listed options on the BX facility on the Back-up Exchange, if, for example, circumstances surrounding a Disabling Event result in BX Participants being delayed in connecting to the Back-up Exchange in time for prompt resumption of trading. Options 4, Section 10(a)(2) of the proposed rule provides for the continued trading of BX singly listed options at the Back-up Exchange in the event of a Disabling Event at BX. Proposed paragraph (a)(2)(ii) provides that BX may enter into arrangements with a Back-up Exchange under which the Back-up Exchange will agree, in the event of a Disabling Event, to list for trading option classes that are then singly listed only by BX. Such option classes would trade on the Back-up Exchange as listings of the Back-up Exchange and in accordance with the rules of the Back-up Exchange. Under proposed paragraph (a)(2)(iii), any such options class listed by the Back-up Exchange that does not satisfy the standard listing and maintenance criteria of the Back-up Exchange will be subject, upon listing by the Back-up Exchange, to delisting (and, thus, restrictions on opening new series, and engaging in opening transactions in those series with open interest, as may be provided in the rules of the Back-up Exchange). BX singly listed option classes would be traded by members of the Back-up Exchange and by BX Participants selected by BX to the extent the Back-up Exchange can accommodate BX Participants in the capacity of temporary members of the Back-up Exchange. If the Back-up Exchange is unable to accommodate all BX Participants that desire to trade BX singly listed options at the Back-up Exchange, BX may determine which Participants shall be eligible to trade such options at the Back-up Exchange by considering the same factors used to determine which BX Participants are eligible to trade BX exclusively listed options at the BX facility at the Back-up Exchange.

Proposed Section (a)(3) provides that BX may enter into arrangements with a Back-up Exchange to permit BX Participants to conduct trading on a Back-up Exchange of some or all of BX's multiply listed options in the event of a Disabling Event. While continued trading of multiply listed options upon the occurrence of a Disabling Event is not likely to be as great a concern as the continued trading of exclusively and singly listed options, BX nonetheless believes a provision for multiply listed options should be included in the rule so that the exchanges involved will have the option to permit members of the Disabled Exchange to trade multiply listed options on the Back-up Exchange. Such options shall trade as a listing of the Back-up Exchange in accordance with the rules of the Back-up Exchange.

Options 4, Section 10(b) describes the back-up trading arrangements that would apply if BX were the Back-up Exchange. In general, the provisions in Section (b) are the converse of the provisions in Section (a). With respect to the exclusively listed options of the Disabled Exchange, the facility of BX used by the Disabled Exchange to trade some or all of the Disabled Exchange's exclusively listed options will be deemed to be a facility of the Disabled Exchange, and such option classes shall trade as listings of the Disabled Exchange. Trading of the Disabled Exchange's exclusively listed options on the Disabled Exchange's facility at BX shall be conducted in accordance with BX rules, and BX will perform the related regulatory functions with respect to such trading, in each case except as the Disabled Exchange and BX may specifically agree otherwise. BX rules that govern trading on the Disabled Exchange's facility at BX shall be deemed to be rules of the Disabled Exchange for purposes of such trading. Sections (b)(2) and (b)(3) describe the arrangements applicable to trading of the Disabled Exchange's singly and multiply listed options at BX, and are the converse of Sections (a)(2) and (a)(3). Paragraph (b)(2)(i) includes a provision that would permit BX to allocate singly listed option classes of the Disabled Exchange to a BX Market Maker in advance of a Disabling Event, without utilizing the allocation process under BX Rule Options 2, Section 1, to enable BX to quickly list such option classes upon the occurrence of a Disabling Event.

Options 4, Section 10(c) describes the obligations of Participants with respect to the trading by ''temporary members'' on the facilities of another exchange. Section (c)(1) sets forth the obligations applicable to Participants of a Back-up Exchange who act in the capacity of temporary Participants of the Disabled Exchange on the facility of the Disabled Exchange at the Back-up Exchange. Section (c)(1) provides that a temporary Participant of the Disabled Exchange shall be subject to, and obligated to comply with, the rules that govern the operation of the facility of the Disabled Exchange at the Back-up Exchange. This would include the rules of the Disabled Exchange to the extent applicable during the period of such trading, including the rules of the Disabled Exchange limiting its liability for the use of its facilities that apply to members of the Disabled Exchange. Additionally, (i) such temporary Participant shall be deemed to have satisfied, and the Disabled Exchange has agreed to waive specific compliance with, rules governing or applying to the maintenance of a person's or a firm's status as a Participant of the Disabled Exchange, including all dues, fees and charges imposed generally upon members of the Disabled Exchange based on their status as such, (ii) such temporary Participant shall have none of the rights of a member of the Disabled Exchange except the right to conduct business on the facility of the Disabled Exchange at the Back-up Exchange to the extent described in the Rule, (iii) the Participant associated with such temporary Participant, if any, shall be responsible for all obligations arising out of that temporary Participant's activities on or relating to the Disabled Exchange, and (iv) the clearing member of such temporary Participant shall

[16] Of note, unlike Phlx, BX does not have rules to appoint Lead Market Makers.

guarantee and clear the transactions of such temporary Participant on the Disabled Exchange.

Section (c)(2) sets forth the obligations applicable to members of a Disabled Exchange who act in the capacity of temporary Participants of the Back-up Exchange for the purpose of trading singly listed and multiply listed options of the Disabled Exchange. Such temporary Participants shall be subject to, and obligated to comply with, the rules of the Back-up Exchange that are applicable to the Back-up Exchange's own members, including the rules of the Back-up Exchange limiting its liability for the use of its facilities that apply to members of the Back-up Exchange. Temporary Participants of the Back-up Exchange have the same obligations as those set forth in Section (c)(1) that apply to temporary Participants of the Disabled Exchange, except that, in addition, temporary Participants of the Back-up Exchange shall only be permitted (i) to act in those capacities on the Back-up Exchange that are authorized by the Back-up Exchange and that are comparable to capacities in which the temporary Participant has been authorized to act on the Disabled Exchange, and (ii) to trade in those option classes in which the temporary Participant is authorized to trade on the Disabled Exchange.

Options 4, Section 10 provides that the rules of the Back-up Exchange shall apply to the trading of the singly and multiply listed options of the Disabled Exchange traded on the Back-up Exchange's facilities, and (with certain limited exceptions) the trading of exclusively listed options of the Disabled Exchange traded on the facility of the Disabled Exchange at the Back-up Exchange. The Back-up Exchange has agreed to perform the related regulatory functions with respect to such trading (except as the Back-up Exchange and the Disabled Exchange may specifically agree otherwise). Section (d) provides that if a Back-up Exchange initiates an enforcement proceeding with respect to the trading during a back-up period of singly or multiply listed options of the Disabled Exchange by a temporary Participant of the Back-up Exchange, or exclusively listed options of the Disabled Exchange by a member of the Disabled Exchange (other than a member of the Back-up Exchange who is a temporary member of the Disabled Exchange), and such proceeding is in process upon the conclusion of the back-up period, the Back-up Exchange may transfer responsibility for such proceeding to the Disabled Exchange following the conclusion of the back-up period. This approach to the exercise of enforcement jurisdiction is also consistent with past precedent.

With respect to arbitration jurisdiction, proposed Section (d) provides that arbitration of any disputes with respect to any trading during a back-up period of singly or multiply listed options of the Disabled Exchange or of exclusively listed options of the Disabled Exchange on the Disabled Exchange's facility at the Back-up Exchange will be conducted in accordance with the rules of the Back-up Exchange, unless the parties to an arbitration agree that it shall be conducted in accordance with the rules of the Disabled Exchange.

Proposed Supplementary Material .01 to Options 4, Section 10 clarifies that to the extent Options 4, Section 10 provides that another exchange will take certain action, the Rule is reflecting what that exchange has agreed to do by contractual agreement with BX, but Options 4, Section 10 is not binding on the other exchange.

Options 4C

The Exchange proposes to reserve 4C as BX does not list U.S. Dollar-Settled Foreign Currency Options.

Bid/Ask Differentials

The Exchange proposes to amend Options 4, Section 8(a), and Options 4A, Section 12(b)(1)(i) to relocate text concerning bid/ask differentials for long-term option series. Currently, Options 4, Section 8(a) describes the bid/ask differentials for long-term options series for equity options and exchange-traded products and Options 4A, Section 12(b)(1)(i) describes the bid/ask differentials for long-term options series for indexes. Currently, the bid/ask differentials shall not apply to such options series until the time to expiration is less than nine (9) months for equity options and exchange-traded funds as provided for within Options 4, Section 8(a). Currently, bid/ask differentials shall not apply to such options series until the time to expiration is less than nine (9) months for index options as provided for within Options 4A, Section 12(b)(1)(i).

The Exchange proposes to centralize the bid/ask differentials within Options 2, Section 5(d)(2)(A) and add a sentence to both Options 4, Section 8(a) and Options 4A, Section 12(b)(1)(i) that cites to Options 2, Section 5(d)(2)(A) for information on bid/ask differentials for the various products. The Exchange also proposes to capitalize ''ask'' in the title of Options 2, Section 5(d)(2). The Exchange believes that this relocation will provide Market Makers with centralized information regarding their bid/ask differential requirements. The Exchange is not amending the bid/ask differentials; the rule text is simply being relocated.

Technical Amendment

The Exchange proposes to amend General 9, Section 51, Research Analysts, to update an improper citation to ''General 9, Section 50'' to ''this Rule.'' The citation is to General 9, Section 51. The Exchange also proposes to remove stray periods throughout Options 4 in the section headings.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Section 6(b)(5) of the Act,[18] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Conforming BX's Options 4 Listing Rules to that of ISE Options 4 is part of the Exchange's continued effort to promote efficiency in the manner in which it administers its rules.

The Exchange's proposal to amend Options 4, Sections 1, 2, 5, and 7 reflect non-substantive amendments to conform those rules to similar ISE rules. These proposed changes removes 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 since the changes are intended to ease the Participants', market participants', and the general public's navigation and reading of the rules and lessen potential confusion and add clarity for market participants.

The proposed amendments to ISE Options 3, Section 3(b) to permit the Exchange, in exceptional circumstances, to select an underlying security even though it does not meet all of the guidelines, is consistent with the Act. Today, the Exchange may establish guidelines to be considered in evaluating potential underlying securities for Exchange options transactions. Providing BX with the same ability to select an underlying security even though it does not meet all of the guidelines as ISE will permit BX to list similar options as ISE for competitive purposes.

The Exchange's proposal to add the defined term ''Financial Instruments'' within Options 4, Section 3(h) and also

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

account for money market instruments, U.S. government securities and repurchase agreements, defined by the term ''Money Market Instruments'' similar to ISE Options 4, Section 3(h) is consistent with the Act. The addition of money market instruments, U.S. government securities and repurchase agreements as securities deemed appropriate for options trading will make clear that these agreements are included in the acceptable securities. The Exchange notes that this rule text is clarifying in nature and will more explicitly provide for money market instruments, U.S. government securities and repurchase agreements as a separate category from what is being defined as ''Financial Instruments'' with this proposal. Today, these instruments are eligible as securities deemed appropriate for options trading.

The Exchange's proposal to remove the following products from Options 4, Section 3(h): The ETFS Silver Trust, the ETFS Palladium Trust, the ETFS Platinum Trust or the Sprott Physical Gold Trust is consistent with the Act because the Exchange no longer lists these products and proposes to remove them the products from its listing rules. The Exchange will file a proposal with the Commission if it determines to list these products in the future.

The Exchange's proposal to amend Options 4, Section 3(h) by removing the rule text at the end of the paragraph which provides, ''all of the following conditions are met,'' and creating separate paragraphs for Options 4, Section 3(h)(1) and (2) is consistent with the Act. These amendments will de-link these subparagraphs so they are read independently. Today, Options 4, Section 3(h)(1) applies to all Exchange-Traded Fund Shares. The Exchange's proposal to clarify that Options 4, Section 3(h)(2) applies to only international or global indexes or portfolios that include non-U.S. securities will bring greater clarity to the qualification standards for listing options on Exchange-Traded Fund Shares. ISE Options 4, Section 3(h) currently has similar rule text. Proposed Options 4, Sections 3(h) generally concerns securities deemed appropriate for options trading. The proposed new rule text adds language stating that subparagraph (h)(2) of Options 4, Section 3 applies to the extent the Exchange-Traded Fund Share is based on international or global indexes or portfolios that include non-U.S. securities. This language is intended to serve as a guidepost and clarify that (1) subparagraph (h)(2) does not apply to an Exchange-Traded Fund Shares based on a U.S. domestic index or portfolio, and (2) subparagraph (h)(2) includes Exchange-Traded Fund Shares that track a portfolio and do not track an index.

The Exchange's proposal to amend Options 4, Section 3(h)(2)(A) to remove the phrase ''for series of portfolio depositary receipts and index fund shares based on international or global indexes,'' is consistent with the Act. Today, Options 4, Section 3(h), subparagraphs (h)(1) and (h)(v) permit the Exchange to list options on Exchange-Traded Fund Shares based on generic listing standards for portfolio depositary receipts and index fund shares without applying component based requirements in subparagraphs (h)(2)(B)–(D). By removing the proposed rule text, the Exchange would make clear that subparagraph (h)(2)(A) applies to Exchange-Traded Fund Shares based on international or global indexes, or portfolios that include non-U.S. securities, that are listed pursuant to generic listing standards and comply with Options 4, Section 3(h) and subparagraph (h)(1).

The Exchange's proposal to amend the term ''comprehensive surveillance agreement'' within Options 4, Section 3(h)(2) (A)–(D) to instead provide ''comprehensive surveillance sharing agreement'' is consistent with the Act as the amendment will bring greater clarity to the term.

The Exchange's proposal to add the phrase ''if not available or applicable, the Exchange-Traded Fund's'' to Options 4, Section 3(h)(2)(B), (C), and (D) is consistent with the Act as it will clarify that when component securities are not available, the portfolio of securities upon which the Exchange-Traded Fund Share is based can be used instead. This rule text currently exists within ISE Options 4, Section 3(h).

The Exchange's proposal to amend and relocate the rule text within Options 4, Section 3(h)(2)(B), (C), and (D) will bring greater clarity to the current rule text by explicitly providing that the index being referenced is the one on which the Exchange-Traded Fund Shares is based. Also, adding ''or portfolio'' to Options 4, Section 3(h)(2)(C), and (D) will bring greater clarity to the rule text by conforming the rule text of (C) and (D) to the language within (B).

The proposed amendments to Options 4, Section 3(h) will conform BX's rule text to ISE Options 4, Section 3(h).

The remainder of the change to Options 3, Section 3 are non-substantive and intended to conform to ISE Options 3, Section 3. These proposed changes 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 since the changes are intended to ease the Participants', market participants', and the general public's navigation and reading of the rules and lessen potential confusion and add clarity for market participants.

The proposed amendments to Options 4, Section 4 remove unnecessary rule text and make clear that options contracts that are no longer approved will not be listed. The proposed amendments to adopt new Options 4, Section 4(i) similar to ISE, Options 4, Section 4(i), are consistent with the Act. Today, the Exchange would not open additional series of HOLDRs without filing a rule change with the Commission and adopting a corresponding rule. This rule text, similar to ISE, explicitly provides that the Exchange would not open additional series of options overlying HOLDRs (without prior Commission approval) if: (1) The proportion of securities underlying standardized equity options to all securities held in a HOLDRs trust is less than 80% (as measured by their relative weightings in the HOLDRs trust); or (2) less than 80% of the total number of securities held in a HOLDRs trust underlie standardized equity options. This rule text bring greater clarity to BX's rules in that HOLDRs would not be in certain circumstances.

The Exchange's proposal to remove the rule text within Options 4, Section 4(l), related to inadequate volume delisting, is consistent with the Act. To remain competitive with other options markets, the Exchange proposes to adopt the same obligations for continuance of trading.[19] Also, pursuant to proposed new Options 4, Section 5(e) the Exchange will announce securities that have been withdrawn. With this proposal, the Exchange would eliminate the requirement that an option must be trading for more than 6 months. The Exchange notes that this condition is not present on other options markets such as ISE and Cboe.[20] This also applies to the requirement that the average daily volume of the entire class of options over the last six (6) month period was less than twenty (20) contracts. The Exchange notes that BX's requirements are different than other options markets and to remain competitive the Exchange proposes to adopt the same standards as ISE and Cboe to remain competitive and list similar options as the other markets. While the Exchange may in the future

[19] Options 4, Section 4(b), as amended, establishes requirements for continued listing, similar to ISE.

[20] *See* ISE Options 4, Section 4 and Cboe Rule 4.4.

determine to delist an option that is singly listed, the Exchange's proposal to remove the rule text which provides that ''If the option is singly listed only on the Exchange, the Exchange will cease to add new series and may delist the class of options when there is no remaining open interest'' is consistent with the Act. This rule text does not exist on ISE and Cboe. The Exchange today provides notification of a delisting to all members so therefore it is not necessary to retain the provisions within (b)(2). Also, proposed new Options 4, Section 4(e) establishes the rules by which the Exchange will announce securities that have been withdrawn. The rule text within Options 4, Section 4(b), as amended to conform to ISE rule text, will continue to govern the continued approval of options on the Exchange.

The remainder of the changes to Options 3, Section 3 remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protects investors and the public interest. Overall, these changes are of a non-substantive nature and either modify, clarify or relocate the existing Rulebook language to reflect the language of the ISE version of the rule and are intended to ease the Participants', market participants', and the general public's navigation and reading of the rules and lessen potential confusion and add clarity for market participants.

The Exchange believes that the changes to proposed Options 4, Section 8 removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general protects investors and the public interest because the changes are mainly of a non-substantive nature with much of the rule text largely simply being relocated from current Options 4, Section 5(a)(i)(D) to new Options 4, Section 8(a) with some minor amendments and is intended to ease the Participants', market participants', and the general public's navigation and reading of the rules and lessen potential confusion and add clarity for market participants.

The Exchange's proposal to amend Options 3, Section 8 and Options 4A, Section 12(b)(1)(i) to relocate text concerning bid/ask differentials for long-term option series is consistent with the Act. The Exchange's proposal will centralize the bid/ask differentials within Options 2, Section 5(d)(2)(A) and add a sentence to both Options 3, Section 8 and Options 4A, Section 12(b)(1)(i) that cites to Options 2, Section 5(d)(2)(A) for information on bid/ask differentials for the various products. The Exchange is not amending the bid/ask differentials; the rule text is simply being relocated. The Exchange believes that this relocation will provide Market Makers with centralized information regarding their bid/ask differential requirements.

The remainder of the changes to Options 3, Section 8 are non-substantive.

The Exchange believes that adopting a new Section 9, Limitation on the Liability of Index Licensors for Option on Fund Share, similar to ISE, is consistent with the Act. Specifically, this proposal seeks to limit the liability of index licensors who grant the BX a license to use their underlying indexes or portfolios in connection with the trading of options on Fund Shares. This rule text is identical to ISE rule text.[21] Proposed Section 9(b) provides that no index licensor with respect to any index or portfolio underlying an option on Exchange-Traded Fund Shares traded on the Exchange makes any warranty, express or implied, as to the results to be obtained by any person or entity from the use of such index or portfolio, any opening, intra-day or closing value therefor, or any data included therein or relating thereto, in connection with the trading of any option contract on Exchange-Traded Fund Shares based thereon or for any other purpose. The disclaimers within proposed Section 9 are consistent with the Act in that these disclaimers provide market participants with relevant information as to the liabilities on option contracts on Exchange-Traded Fund Shares.

The Exchange believes that the adoption of Options 4, Section 10, Back-up Trading Arrangements, will provide BX with similar abilities as ISE to permit BX to enter into arrangements with one or more other exchanges (each a ''Back-up Exchange'') to permit BX and its Participants to use a portion of a Back-up Exchange's facilities to conduct the trading of BX exclusively listed[22] options in the event of a Disabling Event, and similarly to permit BX to provide trading facilities for another exchange's exclusively listed options if that exchange (a ''Disabled Exchange'') is prevented from trading due to a Disabling Event. With this proposal, BX is proposing to adopt listing rules similar to Phlx to list and trade U.S. Dollar-Settled Foreign Currency Options. BX believes that it is important that it develop back-up trading arrangements to minimize the potential disruption and market impact that a Disabling Event could cause. The proposed rule changes are designed to address the key elements necessary to mitigate the effects of a Disabling Event affecting the Exchange, minimize the impact of such an event on market participants, and provide for a liquid and orderly marketplace for securities listed and traded on the Exchange if a Disabling Event occurs. In particular, the proposed rule change is intended to ensure that BX's exclusively listed and singly listed products will have a trading venue in the event that trading at BX is prevented due to a Disabling Event. The Exchange believes that having these back-up trading arrangements in place will minimize potential disruptions to the markets and investors if a catastrophe occurs that requires the Exchange's primary facility to be closed for an extended period. Phlx and ISE has a similar rule,[23] and the Exchange believes that it is important to the protection of investors and the public interest that it also adopt rules that allow BX exclusively and singly listed options to continue to trade in the event of a Disabling Event. The proposed rule change also provides authority for the BX to provide a back-up trading venue should another exchange be affected by a Disabling Event, which will benefit the markets and investors if a Disabling Event were to happen on another exchange that has entered into a back-up trading arrangement with the BX. Finally, the proposed rule change grants authority to Exchange officials to take action under emergency conditions, which should enable key actions to be taken by BX representatives in the event of a Disabling Event, and clarifies the fees that will apply if these back-up trading arrangements are invoked, which will reduce investor confusion and minimize the disruption to investors associated with a Disabling Event. Under proposed paragraph (a)(1)(vi), members of the Back-up Exchange shall not be authorized to trade in any BX exclusively listed options, except that (i) BX may deputize willing brokers of the Back-up Exchange as temporary BX Participants to permit them to execute orders as Participants in BX exclusively listed options traded on BX's facility at the Back-up Exchange, and (ii) the Back-up Exchange has agreed that it will, at the instruction of BX, select members of the Back-up Exchange that are willing to be deputized by BX as temporary BX

[21] *See* ISE Options Listing Rule Section 9.

[22] As defined within the proposed rule, the term ''exclusively listed option'' means an option that is listed exclusively by an exchange (because the exchange has an exclusive license to use, or has proprietary rights in, the interest underlying the option).

[23] *See* Phlx and ISE Rules Options 3, Section 10.

members authorized to trade BX exclusively listed options on BX's facility at the Back-up Exchange for such period of time following a Disabling Event as BX determines to be appropriate, and BX may deputize such members of the Back-up Exchange as temporary BX members for that purpose. The foregoing exceptions would permit members of the Back-up Exchange to trade BX exclusively listed options on the BX facility on the Back-up Exchange, if, for example, circumstances surrounding a Disabling Event result in BX members being delayed in connecting to the Back-up Exchange in time for prompt resumption of trading.

The Exchange's proposal to reserve Options 4C will make clear that BX does not list U.S. Dollar-Settled Foreign Currency Options. Other Nasdaq Affiliated exchanges, such as Nasdaq Phlx LLC, list U.S. Dollar-Settled Foreign Currency Options and would therefore have rules in that section. By marking Options 4C reserved, market participants will be given additional insight into the types of products available on BX.

Technical Amendment

The Exchange's proposal to amend General 9, Section 51, Research Analysts, to update an improper citation to ''General 9, Section 50'' to ''this Rule'' and remove stray periods throughout Options 4 in the section headings are consistent with the Act. This non-substantive amendment will bring greater clarity to the rule.

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 relocation of the Options Listing Rules will facilitate the use of the Rulebook by Participants of the Exchange, who are members of other Affiliated Exchanges; other market participants; and the public in general. The changes are consistent with the ISE Rulebook.

The Exchange's proposal to amend Options 4, Sections 1, 2, 5, and 7 reflects non-substantive amendments to conform those rules to similar ISE rules at Options 4, Sections 1, 2, 5, and 7. These proposed changes do not impose an undue burden on competition since the changes are intended to ease the Participants', market participants', and the general public's navigation and reading of the rules and lessen potential confusion and add clarity for market participants.

The proposed amendments to ISE Options 3, Section 3(b) to permits the Exchange, in exceptional circumstances, to select an underlying security even though it does not meet all of the guidelines do not impose an undue burden on competition. Today, the Exchange may establish guidelines to be considered in evaluating potential underlying securities for Exchange options transactions. Providing BX with the same ability to select an underlying security even though it does not meet all of the guidelines as ISE will permit BX to list similar options as ISE for competitive purposes.

The Exchange's proposal to add the defined term ''Financial Instruments'' within Options 4, Section 3(h) and also account for money market instruments, U.S. government securities and repurchase agreements, defined by the term ''Money Market Instruments'' similar to ISE Options 4, Section 3(h) do not impose an undue burden on competition. The addition of money market instruments, U.S. government securities and repurchase agreements as securities deemed appropriate for options trading will make clear that these agreements are included in the acceptable securities.

The Exchange's proposal to remove the following products from Options 4, Section 3(h): The ETFS Silver Trust, the ETFS Palladium Trust, the ETFS Platinum Trust or the Sprott Physical Gold Trust do not impose an undue burden on competition. The Exchange no longer lists these products and proposes to remove them the products from its listing rules.

The Exchange's proposal to amend Options 4, Section 3(h) by removing the rule text at the end of the paragraph which provides, ''all of the following conditions are met,'' and creating separate paragraphs for Options 4, Section 3(h)(1) and (2) does not impose an undue burden on competition. These amendments will de-link these subparagraphs so they are read independently. Today, Options 4, Section 3(h)(1) applies to all Exchange-Traded Fund Shares. The Exchange's proposal to clarify that Options 4, Section 3(h)(2) applies to only international or global Exchange-Traded Fund Shares that include non-U.S. securities will bring greater clarity to the qualification standards for listing options on Exchange-Traded Fund Shares. Specifically, this language is intended to serve as a guidepost and clarify that (1) subparagraph (h)(2) does not apply to an Exchange-Traded Fund Shares based on a U.S. domestic index or portfolio, and (2) subparagraph (h)(2) includes Exchange-Traded Fund Shares that track a portfolio and do not track an index. This amendment will uniformly apply the criteria within Options 4, Section 3 when it lists options products on BX.

The Exchange's proposal to amend Options 4, Section 3(h)(2)(A) to remove the phrase ''for series of portfolio depositary receipts and index fund shares based on international or global indexes,'' does not impose an undue burden on competition. Today, Options 4, Section 3(h), subparagraphs (h)(1) and (h)(v) permit the Exchange to list options on Exchange-Traded Fund Shares based on generic listing standards for portfolio depositary receipts and index fund shares without applying component based requirements in subparagraphs (h)(2)(B)–(D). By removing the proposed rule text, the Exchange would make clear that subparagraph (h)(2)(A) applies to Exchange-Traded Fund Shares based on international or global indexes, or portfolios that include non-U.S. securities, that are listed pursuant to generic listing standards and comply with Options 4, Section 3(h) and subparagraph (h)(1). This amendment will uniformly apply the criteria within Options 4, Section 3 when it lists options products on BX.

The Exchange's proposal to amend the term ''comprehensive surveillance agreement'' within Options 4, Section 3(h)(2) (A)–(D) to instead provide ''comprehensive surveillance sharing agreement'' does not impose an undue burden on competition as the amendment will bring greater clarity to the term.

The Exchange's proposal to add the phrase ''if not available or applicable, the Exchange-Traded Fund's'' to Options 4, Section 3(h)(2)(B), (C), and (D) does not impose an undue burden on competition as it will clarify that when component securities are not available, the portfolio of securities upon which the Exchange-Traded Fund Share is based can be used instead.

The Exchange's proposal to amend and relocate the rule text within Options 4, Section 3(h)(2)(B), (C), and (D) will bring greater clarity to the current rule text by explicitly providing that the index being referenced is the one on which the Exchange-Traded Fund Shares is based. Also, adding ''or portfolio'' to Options 4, Section 3(h)(2)(C), and (D) will bring greater clarity to the rule text by conforming the rule text of (C) and (D) to the language within (B).

The proposed amendments to Options 4, Section 4 remove unnecessary rule text and make clear that options contracts that are no longer approved

will not be listed. The proposed amendments to adopt new Options 4, Section 4(i) similar to ISE, Options 4, Section 4(i), does not impose an undue burden on competition. The amendments would provide for provisions wherein the Exchange will not open additional series of options overlying HOLDRs similar to ISE, which provisions do not currently exist.

The Exchange's proposal to remove the rule text within Options 4, Section 4(l), related to inadequate volume delisting, does not impose an undue burden on competition. To remain competitive with other options markets, the Exchange proposes to adopt the same obligations for continuance of trading.[24] Also, pursuant to proposed new Options 4, Section 5(e) the Exchange will announce securities that have been withdrawn. With this proposal, the Exchange would eliminate the requirement that an option must be trading for more than 6 months. The Exchange notes that this condition is not present on other options markets such as ISE and Cboe.[25] This also applies to the requirement that the average daily volume of the entire class of options over the last six (6) month period was less than twenty (20) contracts. The Exchange notes that BX's requirements are different than other options markets and to remain competitive the Exchange proposes to adopt the same standards as ISE and Cboe to remain competitive and list similar options as the other markets. The Exchange's proposal removes the rule text which provides that ''If the option is singly listed only on the Exchange, the Exchange will cease to add new series and may delist the class of options when there is no remaining open interest'' does not impose an undue burden on competition. This rule text does not exist on ISE and Cboe. The Exchange today provides notification of a delisting to all members so therefore it is not necessary to retain the provisions within (b)(2). Also, proposed new Options 4, Section 4(e) establishes the rules by which the Exchange will announce securities that have been withdrawn.

The Exchange believes that the changes to proposed Options 4, Section 8 do not impose an undue burden on competition as the changes are mainly of a non-substantive nature with much of the rule text largely simply being relocated from current Options 4, Section 5(a)(i)(D) to new Options 4, Section 8(a) with some minor amendments.

The Exchange's proposal to amend Options 3, Section 8 and Options 4A, Section 12(b)(1)(i) to relocate text concerning bid/ask differentials for long-term option series does not impose an undue burden on competition. The Exchange believes that this relocation will provide Market Makers with centralized information regarding their bid/ask differential requirements.

Adopting a new Section 9, Limitation on the Liability of Index Licensors for Option on Fund Share, similar to ISE does not impose an undue burden on competition. The proposal seeks to limit the liability of index licensors who grant the BX a license to use their underlying indexes or portfolios in connection with the trading of options on Fund Shares. This rule text is identical to ISE rule text.[26] Proposed Section 9(b) provides that no index licensor with respect to any index or portfolio underlying an option on Exchange-Traded Fund Shares traded on the Exchange makes any warranty, express or implied, as to the results to be obtained by any person or entity from the use of such index or portfolio, any opening, intra-day or closing value therefor, or any data included therein or relating thereto, in connection with the trading of any option contract on Exchange-Traded Fund Shares based thereon or for any other purpose.

The Exchange believes that the adoption of Options 4, Section 10, Back-up Trading Arrangements, will provide BX with similar abilities as ISE to permit BX to enter into arrangements with one or more other exchanges (each a ''Back-up Exchange'') to permit BX and its Participants to use a portion of a Back-up Exchange's facilities to conduct the trading of BX exclusively listed[27] options in the event of a Disabling Event, and similarly to permit BX to provide trading facilities for another exchange's exclusively listed options if that exchange (a ''Disabled Exchange'') is prevented from trading due to a Disabling Event. Permitting BX to list U.S. Dollar-Settled Foreign Currency Options similar to Phlx would allow market participants another venue in which to transact U.S. Dollar-Settled Foreign Currency Options.

Technical Amendment

The Exchange's proposal to amend General 9, Section 51, Research Analysts, to update an improper citation to ''General 9, Section 50'' to ''this Rule'' and remove stray periods throughout Options 4 in the section headings do not impose an undue burden on competition. This non-substantive amendment will bring greater clarity to the rule.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[28] and subparagraph (f)(6) of Rule 19b–4 thereunder.[29]

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.

A proposed rule change filed under Rule 19b–4(f)(6)[30] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[31] the Commission may designate a shorter time if such action is consistent with protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed

[24] Options 4, Section 4(b), as amended, establishes requirements for continued listing, similar to ISE.

[25] *See* ISE Options 4, Section 4 and Cboe Rule 4.4.

[26] *See* ISE Options Listing Rule Section 9.

[27] As defined within the proposed rule, the term ''exclusively listed option'' means an option that is listed exclusively by an exchange (because the exchange has an exclusive license to use, or has proprietary rights in, the interest underlying the option).

[28] 15 U.S.C. 78s(b)(3)(A)(iii).

[29] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[30] 17 CFR 240.19b–4(f)(6).

[31] 17 CFR 240.19b–4(f)(6).

rule change may become operative upon filing. The Exchange's proposal does not raise any new or novel issues. Therefore, the Commission believes that waving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposed rule change to be operative on upon filing.[32]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2021–032 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2021–032. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2021–032 and should be submitted on or before August 26, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

J. Matthew DeLesDernier,

Assistant Secretary.

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[32] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92531; File No. SR–NYSEArca–2021–07]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend NYSE Arca's Co-Location Services and Fee Schedule To Add Two Partial Cabinet Solution Bundles

July 30, 2021.

On January 19, 2021, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's co-location rules to add two partial cabinet solution bundles. The proposed rule change was published for comment in the **Federal Register** on February 8, 2021.[3] On March 18, 2021, the Commission extended the time period within which to 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 May 9, 2021.[4] On May 6, 2021, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[5] The Commission received a comment letter on the proposal from the Exchange.[6]

Section 19(b)(2) of the Act [7] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on February 8, 2021.[8] The 180th day after publication of the Notice is August 7, 2021. The Commission is extending the time period for approving or disapproving the proposal for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule changes along with the comment received. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[9] designates October 6, 2021, as the date by which the Commission should either approve or disapprove the proposed rule change (File No. SR–NYSEArca–2021–07).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–16674 Filed 8–4–21; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 91044 (February 2, 2021), 86 FR 8662 (SR–NYSEArca–2021–07) (''Notice'').

[4] *See* Securities Exchange Act Release No. 91360, 86 FR 15763 (March 24, 2021) (SR–NYSEArca–2021–07).

[5] *See* Securities Exchange Act Release No. 91785 (May 6, 2021), 86 FR 26082 (May 12, 2021) (SR–NYSE–2021–05, SR–NYSENAT–2021–01, SR–NYSEArca–2021–07, SR–NYSEAMER–2021–04, NYSECHX–2021–01).

[6] *See,* respectively, letter dated July 6, 2021 from Elizabeth K. King, Chief Regulatory Officer, ICE, General Counsel and Corporate Secretary, NYSE to Vanessa Countryman, Secretary, Commission. All comments received by the Commission on the proposed rule change are available on the Commission's website at: *https://www.sec.gov/comments/sr-nyse-2021-05/srnyse202105.htm.*

[7] 15 U.S.C. 78s(b)(2).

[8] *See supra* note 3.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92530]

Notice of Intention To Cancel Registration of Certain Municipal Advisors Pursuant to Section 15b(c)(3) of the Securities Exchange Act of 1934

July 30, 2021.

Notice is given that the Securities and Exchange Commission (the ''Commission'') intends to issue an order or orders, pursuant to Section 15B(c)(3) of the Securities Exchange Act of 1934 (the ''Act''), cancelling the registrations of the municipal advisors whose names appear in the attached Appendix (hereinafter referred to as the ''registrants'').

Section 15B(c)(3) of the Act provides, in pertinent part, that if the Commission finds that any municipal advisor registered under Section 15B is no longer in existence or has ceased to do business as a municipal advisor, the Commission, by order, shall cancel the registration of such municipal advisor.

The Commission finds that each registrant listed in the attached Appendix:

(i) has not filed any municipal advisor form submissions with the Commission through the Commission's Electronic Data Gathering and Retrieval (''EDGAR'') system since January 1, 2019 (including but not limited to the annual amendments (form MA–A) required by 17 CFR 240.15Ba1–5(a)(1)); and

(ii) based on information available from the Municipal Securities Rulemaking Board (the ''MSRB''), (a) is not registered as a municipal advisor with the MSRB under MSRB Rule A–12(a) and/or (b) does not have an associated person who is qualified as a municipal advisor representative under MSRB Rule G–3(d) and for whom there is a Form MA–I required by 17 CFR 240.15Ba1–2(b) available on EDGAR, and/or (c) has not, since January 1, 2019, filed with the MSRB any Form A–12 annual affirmation as required by MSRB Rule A–12(k).

Accordingly, the Commission finds that each of the registrants listed in the attached Appendix either is no longer in existence or has ceased to do business as a municipal advisor.

Notice is also given that any interested person may, by August 30, 2021, at 5:30 p.m. Eastern Time, submit to the Commission in writing a request for a hearing on the cancellation of the registration of any registrant listed in the attached Appendix, accompanied by a statement as to the nature of such person's interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, and such person may request to be notified if the Commission should order a hearing thereon. Any such communication should be addressed to the Commission's Secretary at the address below.

At any time after August 30, 2021, the Commission may issue an order or orders cancelling the registrations of any or all of the registrants listed in the attached Appendix, upon the basis of the information stated above, unless an order or orders for a hearing on the cancellation shall be issued upon request or upon the Commission's own motion. Persons who requested a hearing, or to be advised as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. Any registrant whose registration is cancelled under delegated authority may appeal that decision directly to the Commission in accordance with Rules 430 and 431 of the Commission's rules of practice (17 CFR 201.430 and 431).

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Ernesto Lanza, Senior Counsel to the Director, Office of Municipal Securities, 100 F Street NE, Washington, DC 20549, or at (202) 551–5680.

For the Commission, by the Office of Municipal Securities, pursuant to delegated authority.[1]

J. Matthew DeLesDernier,

Assistant Secretary.

Appendix

Registrant name	SEC ID No.
All American Municipal Advisors LLC	867–02070
ARGENT TRUST Co	867–01984
Black Holocaust Inc., d/b/a Black holocaust Mutual	867–02224
Brock Steven Kyle d/b/a Thurber Brock & Associates	867–01746
Burke Richard Stephen	867–02031
C.A. WHITTAKER & ASSOCIATES, LLC, d/b/a Whittaker & Company, PLLC	867–01736
D B & Co	867–02211
DAMON ROCQUE SECURITIES CORP\BD	867–01305
Financing Ideas Inc	867–01649
First Midwest Municipal Lease Corp., d/b/a Midwest Healthcare Capital (MHC)	867–02287
Friedman, Luzzatto & Co	867–00536
Garffer Jerome L., d/b/a G Capital Investments	867–01885
Grant Financial Advisors, LLC	867–01818
IFS Planning, INC	867–02298
Ironwood Advisors	867–01112
Laube Capital Advisors, LLC	867–02023
Muni Funding Solutions LLC	867–02292
Ross Infrastructure Development LLC	867–02344
Shift 4 Consulting, L.L.C	867–01960

[FR Doc. 2021–16673 Filed 8–4–21; 8:45 am]

BILLING CODE 8011–01–P

[1] 17 CFR 200.30–3a(a)(1)(ii).

DEPARTMENT OF STATE

[Public Notice: 11490]

Office of the Chief of Protocol; Gifts to Federal Employees From Foreign Government Sources Reported to Employing Agencies in Calendar Year 2019

The Office of the Chief of Protocol, Department of State, submits the following comprehensive listing of the statements which, as required by law, federal employees filed with their employing agencies during calendar year 2019 concerning overvalue gifts received from foreign government sources. All information reported to the Office of the Chief of Protocol, including gift appraisal and donor information, is the responsibility of the employing agency, in accordance with applicable law and GSA regulations.

The compilation includes reports of both tangible gifts and gifts of travel or travel expenses of more than minimal value, as defined in 5 U.S.C. 7432 and GSA regulations. For calendar years 2017–2019 (January 1, 2017 through December 31, 2019), minimal value was $390.00. Pursuant to Title 22 of the Code of Federal Regulations Section 3.4, the report includes all gifts given on a single occasion when the aggregate value of those gifts exceeds minimal value. Also included are some gifts received in previous years, including 30 items from 2018 and two items from 2017. These latter gifts are being reported in this year's report for calendar year 2019 because the Office of the Chief of Protocol, Department of State, did not receive the information required to include them in earlier reports. Agencies not listed in this report either did not receive relevant gifts during the calendar year or did not respond to the State Department's Office of the Chief of Protocol's request for data.

The U.S. Senate maintains an internal minimal value of $100; therefore, all gifts over the $100 limit are furnished in the U.S. Senate report.

Publication of this listing in the **Federal Register** is required by Section 7342(f) of Title 5, United States Code, as added by Section 515(a)(1) of the Foreign Relations Authorization Act, Fiscal Year 1978 (Pub. L. 95–105, August 17, 1977, 91 Stat. 865).

Dated: July 22, 2021.

Carol Perez,

Acting Under Secretary for Management, U.S. Department of State.

AGENCY: THE WHITE HOUSE—EXECUTIVE OFFICE OF THE PRESIDENT

[Report of Tangible Gifts Furnished by the White House—Executive Office of the President]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Donald J. Trump, President of the United States.	Vase with floral pattern. Rec'd—1/27/2019. Est. Value—$680.00. Disposition—Transferred to the National Archives and Records Administration (NARA).	His Excellency Liu He, Vice Premier of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald J. Trump, President of the United States.	Binoculars. Rec'd—2/20/2019. Est. Value—$1,192.00. Disposition—Transferred to NARA.	His Excellency Sebastian Kurz, Chancellor of the Republic of Austria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald J. Trump, President of the United States.	Vase displaying the Statue of Liberty on one side and Ha Long Bay on the other. Rec'd—2/26/2019. Est. Value—$440.00. Disposition—Transferred to NARA.	His Excellency Nguyen Xuan Phuc, Prime Minister of the Socialist Republic of Vietnam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald J. Trump, President of the United States.	Ceramic dragon head. Rec'd—2/27/2019. Est. Value—$1,590.00. Disposition—Transferred to NARA.	His Excellency Nguyen Phu Trong, President of the Socialist Republic of Vietnam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald J. Trump, President of the United States.	CZ 75 9mm pistol. Rec'd—3/6/2019. Est. Value—$710.00. Disposition—Transferred to NARA.	His Excellency Andrew Babis, Prime Minister of the Czech Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald J. Trump, President of the United States.	Crystal bowl. Rec'd—3/13/2019. Est. Value—$2,700.00. Disposition—Transferred to NARA.	His Excellency Leo Varadkar, Prime Minister of Ireland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald J. Trump, President of the United States.	Brazilian hardwood bench carved to resemble a jaguar. Rec'd—3/18/2019. Est. Value—$1,175.00. Disposition—Transferred to NARA.	His Excellency Jair Bolsonaro, President of the Federative Republic of Brazil.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald J. Trump, President of the United States.	Set of five commemorative coins issued by the Central Bank of The Bahamas. Rec'd—3/22/2019. Est. Value—$700.00. Disposition—Transferred to NARA.	The Right Honorable Hubert Minnis, Prime Minister of the Commonwealth of The Bahamas.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald J. Trump, President of the United States.	Brown leather-bound book of Hebrew songs. Rec'd—3/25/2019. Est. Value—$500.00. Disposition—Transferred to NARA.	His Excellency Benjamin Netanyahu, Prime Minister of the State of Israel.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald J. Trump, President of the United States.	Painting of President Donald J. Trump on dual pane glass. Rec'd—4/1/2019. Est. Value—$5,250.00. Disposition—Transferred to NARA.	His Excellency Nguyen Phu Trong, President of the Socialist Republic of Vietnam.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: THE WHITE HOUSE—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts Furnished by the White House—Executive Office of the President]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Donald J. Trump, President of the United States.	Large double frame carved from black stone with image of President Donald J. Trump in precious metal on one side and the coat of arms of Egypt on the reverse. Rec'd—4/9/2019. Est. Value—$4,450.00. Disposition—Transferred to NARA.	His Excellency Abdel Fattah El-Sisi, President of the Arab Republic of Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald J. Trump, President of the United States.	Four panel screen with paintings of native wildlife. Rec'd—4/11/2019. Est. Value—$1,339.99. Disposition—Transferred to NARA.	His Excellency Moon Jae-in, President of the Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald J. Trump, President of the United States.	Exclusively designed pen set and abridged first-edition copy of *The Second World War* by Winston S. Churchill. Rec'd—6/5/2019. Est. Value—$1,050.00. Disposition—Transferred to NARA.	Her Majesty The Queen of the United Kingdom of Great Britain and Northern Ireland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald J. Trump, President of the United States.	Gold, onyx, emerald and diamond statue of an Arabian oryx. Rec'd—7/9/2019. Est. Value—$6,300.00. Disposition—Transferred to NARA.	His Highness Sheikh Tamim Bin Hamad Al-Thani, Amir of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald J. Trump, President of the United States.	Statue of the Grand Maitreya and pure cashmere blanket with embroidered cover. Rec'd—7/31/2019. Est. Value—$1,550.00. Disposition—Transferred to NARA.	His Excellency Khaltmaagiin Battulga, President of Mongolia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald J. Trump, President of the United States.	Horus collar adorned with gold and jewels. Rec'd—8/1/2019. Est. Value—$2,940.00. Disposition—Transferred to NARA.	His Excellency Abdel Fattah El-Sisi, President of the Arab Republic of Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald J. Trump, President of the United States.	Bronze sculpture of an Arabian horse. Rec'd—9/17/2019. Est. Value—$7,200.00. Disposition—Transferred to NARA.	His Royal Highness Prince Salman bin Hamad Al-Khalifa, Crown Prince, Deputy Supreme Commander, and First Deputy Prime Minister of the Kingdom of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald J. Trump, President of the United States.	Brass sculpture depicting the Bodhi tree of the Sri Mahabodi Temple. Rec'd—9/17/2019. Est. Value $970.00. Disposition—Transferred to NARA.	His Excellency Narendra Modi, Prime Minister of the Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald J. Trump, President of the United States.	Replica of the ''Bull Headed Lyre'' inside a glass presentation case and statue of a crescent moon. Rec'd—9/24/2019. Est. Value—$1,820.00. Disposition—Transferred to NARA.	His Excellency Barham Salih, President of the Republic of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald J. Trump, President of the United States.	Bronze sculpture of cocoa leaves and traditional harvesting equipment. Rec'd—9/30/2019. Est. Value—$520.00. Disposition—Transferred to NARA.	His Excellency Daniel Kablan Duncan, Vice President of the Republic of Côte d'Ivoire.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald J. Trump, President of the United States.	Turkish glass candle holder with filigree in gold. Rec'd—11/14/2019. Est. Value—$580.00. Disposition—Transferred to NARA.	His Excellency Recep Tayyip Erdoğan, President of the Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald J. Trump, President of the United States.	Framed photograph of President Donald J. Trump and First Lady Melania Trump. Rec'd—11/8/2019. Est. Value—$470.00. Disposition—Transferred to NARA.	The Honorable Scott Morrison, MP, Prime Minister of Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald J. Trump, President of the United States.	Ottoman Empire rifle. Rec'd—11/25/2019. Est. Value—$8,500.00. Disposition—Transferred to NARA.	His Excellency Boyko Borissov, Prime Minister of the Republic of Bulgaria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mrs. Melania Trump, First Lady of the United States.	White gold diamond earrings. Rec'd—3/7/2019. Est. Value—$470.00. Disposition—Transferred to NARA.	Mrs. Monika Babisova, Spouse of the Prime Minister of the Czech Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mrs. Melania Trump, First Lady of the United States.	Ornamental Japanese lacquer box and a signed photograph of the Empress. Rec'd—5/27/2019. Est. Value—$1,130.00. Disposition—Transferred to NARA.	Her Majesty The Empress of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mrs. Melania Trump, First Lady of the United States.	Pearl earrings. Rec'd—5/27/2019. Est. Value—$2,600.00. Disposition—Transferred to NARA.	Mrs. Akie Abe, Spouse of the Prime Minister of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: THE WHITE HOUSE—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts Furnished by the White House—Executive Office of the President]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Mrs. Melania Trump, First Lady of the United States.	Specially commissioned sterling silver jewelry box with enamel lid. Rec'd—6/5/2019. Est. Value—$390.00. Disposition—Transferred to NARA.	Her Majesty The Queen of the United Kingdom of Great Britain and Northern Ireland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mrs. Melania Trump, First Lady of the United States.	Porcelain vase. Rec'd—7/9/2019. Est. Value—$2,300.00. Disposition—Transferred to NARA.	His Highness Sheikh Tamim Bin Hamad Al Thani, Amir of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mrs. Melania Trump, First Lady of the United States.	Framed painting of a nature preserve. Rec'd—7/31/3019. Est. Value—$450.00. Disposition—Transferred to NARA.	His Excellency Khaltmaagiin Buttulga, President of Mongolia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mrs. Melania Trump, First Lady of the United States.	Pearl earrings. Rec'd—9/20/2019. Est. Value—$700.00. Disposition—Transferred to NARA.	Mrs. Jennifer Morrison, Spouse of the Prime Minister of Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Jared Kushner, Assistant to the President and Senior Advisor.	Framed photograph with signature. Rec'd—6/5/2019. Est. Value—$2,830.00. Disposition—Transferred to NARA.	Her Majesty The Queen of the United Kingdom of Great Britain and Northern Ireland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Jared Kushner, Assistant to the President and Senior Advisor.	Framed photograph with signature. Rec'd—6/5/2019. Est. Value—$ $1,690.00. Disposition—Transferred to NARA.	His Royal Highness the Duke of Edinburgh.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Jared Kushner, Assistant to the President and Senior Advisor.	Porcelain vase. Rec'd—6/30/2019. Est. Value—$700.00. Disposition—Transferred to NARA.	His Excellency Moon Jae-in, President of the Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Jared Kushner, Assistant to the President and Senior Advisor.	Clock engraved with the coat of arms of Bahrain. Rec'd—9/17/2019. Est. Value—$3,200.00. Disposition—Transferred to NARA.	His Royal Highness Prince Salman bin Hamad Al-Khalifa, Crown Prince, Deputy Supreme Commander, and First Deputy Prime Minister of the Kingdom of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Jared Kushner, Assistant to the President and Senior Advisor.	Sterling silver candleholder. Rec'd—9/22/2019. Est. Value—$650.00. Disposition—Transferred to NARA.	His Excellency Narendra Modi, Prime Minister of the Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Mick Mulvaney, Assistant to the President and Acting Chief of Staff and Director of the Office of Management and Budget.	Footed porcelain bowl displaying the emblem of Vietnam. Rec'd—4/1/2019. Est. Value—$440.00. Disposition—Transferred to General Services Administration (GSA).	His Excellency Nguyen Xuan Phuc, Prime Minister of the Socialist Republic of Vietnam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable John Bolton, Assistant to the President and National Security Advisor.	Footed porcelain bowl displaying the emblem of Vietnam. Rec'd—4/1/2019. Est. Value—$440.00. Disposition—Pending transfer to GSA [1].	His Excellency Nguyen Xuan Phuc, Prime Minister of the Socialist Republic of Vietnam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable John Bolton, Assistant to the President and National Security Advisor.	Framed photograph with signatures. Rec'd—6/10/2019. Est. Value—$2,830.00. Disposition—Transferred to GSA.	Her Majesty The Queen of the United Kingdom of Great Britain and Northern Ireland and His Royal Highness the Duke of Edinburgh.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Kellyanne Conway, Assistant to the President and Senior Counselor.	Framed photograph with signatures. Rec'd—6/10/2019. Est. Value—$2,830.00. Disposition—Purchased.	Her Majesty The Queen of the United Kingdom of Great Britain and Northern Ireland and His Royal Highness the Duke of Edinburgh.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Sarah Sanders, Assistant to the President and White House Press Secretary.	Footed porcelain bowl displaying the emblem of Vietnam. Rec'd—4/1/2019. Est. Value—$440.00. Disposition—Transferred to GSA.	His Excellency Nguyen Xuan Phuc, Prime Minister of the Socialist Republic of Vietnam.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: THE WHITE HOUSE—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts Furnished by the White House—Executive Office of the President]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Sarah Sanders, Assistant to the President and White House Press Secretary.	Framed photograph with signatures. Rec'd—6/10/2019. Est. Value—$2,830.00. Disposition—Pending transfer to GSA[2].	Her Majesty The Queen of the United Kingdom of Great Britain and Northern Ireland and His Royal Highness the Duke of Edinburgh.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Stephen Miller, Assistant to the President and Senior Advisor for Policy.	Framed photograph with signatures. Rec'd—6/10/2019. Est. Value—$2,830.00. Disposition—Transferred to GSA.	Her Majesty The Queen of the United Kingdom of Great Britain and Northern Ireland and His Royal Highness the Duke of Edinburgh.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Dan Scavino, Assistant to the President and Senior Advisor for Digital Strategy.	Framed photograph with signatures. Rec'd—6/10/2019. Est. Value—$2,830.00. Disposition—Transferred to GSA.	Her Majesty The Queen of the United Kingdom of Great Britain and Northern Ireland and His Royal Highness the Duke of Edinburgh.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Lindsay Reynolds, Assistant to the President and Chief of Staff to the First Lady.	Framed photograph with signatures. Rec'd—6/10/2019. Est. Value—$2,830.00. Disposition—Transferred to GSA.	Her Majesty The Queen of the United Kingdom of Great Britain and Northern Ireland and His Royal Highness the Duke of Edinburgh.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Stephanie Grisham, Deputy Assistant to the President and Deputy Chief of Staff for Communications to the First Lady.	Framed photograph with signatures. Rec'd—6/10/2019. Est. Value—$2,830.00. Disposition—Transferred to GSA.	Her Majesty The Queen of the United Kingdom of Great Britain and Northern Ireland and His Royal Highness the Duke of Edinburgh.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Allison Hooker, Deputy Assistant to the President and Senior Director for Asian Affairs.	Footed porcelain bowl displaying the emblem of Vietnam. Rec'd—4/1/2019. Est. Value—$440.00. Disposition—Pending transfer to GSA[3].	His Excellency Nguyen Xuan Phuc, Prime Minister of the Socialist Republic of Vietnam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Matthew Pottinger, Deputy Assistant to the President and Senior Director for Asian Affairs.	Footed porcelain bowl displaying the emblem of Vietnam. Rec'd—4/1/2019. Est. Value—$440.00. Disposition—Pending transfer to GSA[4].	His Excellency Nguyen Xuan Phuc, Prime Minister of the Socialist Republic of Vietnam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Matthew Pottinger, Deputy Assistant to the President and Senior Director for Asian Affairs.	Bottle of Japanese whisky. Rec'd—5/10/2019. Est. Value—$8,374.00. Disposition—Pending[5].	His Excellency Suga Yoshihide, Chief Cabinet Secretary of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Lisa Curtis, Deputy Assistant to the President and Senior Director for South & Central Asian Affairs.	Silk scarf and two yards of silk fabric. Rec'd—2/26/2019. Est. Value—$670.00. Disposition—Pending transfer to GSA[6].	His Excellency Shavkat Mirziyoyev, President of the Republic of Uzbekistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Lisa Curtis, Deputy Assistant to the President and Senior Director for South & Central Asian Affairs.	Handwoven silk carpet. Rec'd—7/11/2019. Est. Value—$9,600.00. Disposition—Pending transfer to GSAs[7].	Major General Bakhodir Kurbanov, Minister of Defense of the Republic of Uzbekistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

[1] The information is valid as of the date of receipt from the reporting agency to the Office of the Chief of Protocol.
[2] The information is valid as of the date of receipt from the reporting agency to the Office of the Chief of Protocol.
[3] The information is valid as of the date of receipt from the reporting agency to the Office of the Chief of Protocol.
[4] The information is valid as of the date of receipt from the reporting agency to the Office of the Chief of Protocol.
[5] The information is valid as of the date of receipt from the reporting agency to the Office of the Chief of Protocol.
[6] The information is valid as of the date of receipt from the reporting agency to the Office of the Chief of Protocol.
[7] The information is valid as of the date of receipt from the reporting agency to the Office of the Chief of Protocol.

AGENCY: THE EXECUTIVE OFFICE OF THE VICE PRESIDENT

[Report of Tangible Gifts Furnished by the Executive Office of the Vice President]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Michael R. Pence, Vice President of the United States.	Handwoven carpet. Rec'd—08/01/2018. Est. Value—$9,700.00. Disposition—Transferred to NARA.	His Excellency Shavkat Mirziyoyev, President of the Republic of Uzbekistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Michael R. Pence, Vice President of the United States.	Robe, book: *The Constitution of the State of Kuwait,* medallion, and oil rig model. Rec'd—09/04/2018. Est. Value—$1,240.00. Disposition—Robe on official display.[8] Book, medallion, and oil rig model—Transferred to NARA.	His Highness Sheikh Sabah Al-Ahmed Al-Jaber Al-Sabah, Amir of the State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Michael R. Pence, Vice President of the United States.	Gold medallion in presentation box. Rec'd—09/20/2018. Est. Value—$4,040.00. Disposition—Transferred to NARA.	His Excellency Khurelsukh Ukhnaagiin, Prime Minister of Mongolia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Michael R. Pence, Vice President of the United States.	Two large pieces of handmade batik. Rec'd—11/14/2018. Est. Value—$640.00. Disposition—Transferred to NARA.	His Excellency Joko Widodo, President of the Republic of Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Michael R. Pence, Vice President of the United States.	Silver Buccellati picture frame with ornate detailing. Rec'd—11/28/2018. Est. Value—$1,400.00. Disposition—Transferred to NARA.	His Excellency Salem Abdullah Al-Jaber Al-Sabah, Ambassador of the State of Kuwait to the United States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Michael R. Pence, Vice President of the United States.	Meteart Meteorite cufflinks. Rec'd—05/29/2019. Est. Value—$689.99. Disposition—Transferred to NARA.	The Right Honorable Justin Trudeau, PC, MP, Prime Minister of Canada.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Michael R. Pence, Vice President of the United States.	R.M. Williams classic craftsman boots. Rec'd—10/09/2019. Est. Value—$545.00. Disposition—Transferred to NARA.	The Honorable Scott Morrison, MP, Prime Minister of Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Michael R. Pence, Vice President of the United States.	Gold-plated Hagia Sophia Virgin mosaic vase. Rec'd—10/17/2019. Est. Value—$1,300.00. Disposition—Transferred to NARA.	His Excellency Recep Tayyip Erdoğan, President of the Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mrs. Karen Pence, Second Lady of the United States.	Set of wooden geometric candle holders. Rec'd—06/25/2018. Est. Value—$410.00. Disposition—Transferred to NARA.	Her Majesty Queen Rania Al Abdullah, Queen of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mrs. Karen Pence, Second Lady of the United States.	Christofle silver frame with picture of Mrs. Pence receiving Kuwait Humanitarian Award. Rec'd—11/02/2018. Est. Value—$400.00. Disposition—Transferred to NARA.	His Excellency Salem Abdullah Al-Jaber Al-Sabah, Ambassador of the State of Kuwait to the United States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mrs. Karen Pence, Second Lady of the United States.	Two gold-tone leaf place card holders, Singapore Botanical Garden framed print, and clutch. Rec'd—11/16/2018. Est. Value—$1,200.00. Disposition—Place card holders and print on official display.[9] Clutch—Transferred to NARA.	His Excellency Lee Hsien Loong, Prime Minister of the Republic of Singapore.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mrs. Karen Pence, Second Lady of the United States.	Handwoven carpet. Rec'd—04/23/2019. Est. Value—$6,600.00. Disposition—Transferred to NARA.	His Excellency Mohammad Ashraf Ghani, President of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

[8] The information is valid as of the date of receipt from the reporting agency to the Office of the Chief of Protocol.
[9] The information is valid as of the date of receipt from the reporting agency to the Office of the Chief of Protocol.

AGENCY: THE DEPARTMENT OF STATE

[Report of Tangible Gifts Furnished by the Department of State]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Michael R. Pompeo, Secretary of State of the United States.	Book: *Above Two Seas* and sterling silver letter opener. Rec'd—1/15/2019. Est. Value—$1,399.00. Disposition—Transferred to GSA.	His Royal Highness Prince Salman bin Hamad Al-Khalifa, Crown Prince, Deputy Supreme Commander, and First Deputy Prime Minister of the Kingdom of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Michael R. Pompeo, Secretary of State of the United States.	Blue suitcase containing formal male and female dishdashas and perfumes. Rec'd—3/20/2019. Est. Value—$915.00. Disposition—On official display at the National Museum of American Diplomacy.	His Highness Sheikh Sabah Al-Ahmed Al-Jaber Al-Sabah, Amir of the State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Michael R. Pompeo, Secretary of State of the United States.	Eagle statue. Rec'd—3/28/2019. Est. Value—$1,670.00. Disposition—Transferred to GSA.	His Royal Highness Prince Khalid bin Salman Al Saud, Deputy Minister of Defense of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Michael R. Pompeo, Secretary of State of the United States.	Water droplet sculpture. Rec'd—4/18/2019. Est. Value—$1,100.00. Disposition—On official display at the National Museum of American Diplomacy.	His Highness Sheikh Abdullah bin Zayed Al Nahyan, Minister of Foreign Affairs and International Cooperation of the United Arab Emirates.	Non-acceptance would cause embarrassment to donor and U.S. Government
The Honorable Michael R. Pompeo, Secretary of State of the United States.	Bottle of Japanese whisky. Rec'd—6/24/2019. Est. Value—$5,800.00. Disposition—Unknown [10].	The Government of Japan	Non-acceptance would cause embarrassment to donor and U.S. Government
The Honorable Michael R. Pompeo, Secretary of State of the United States.	Lapis bowl and lapis tray. Rec'd—6/27/2019. Est. Value—$1,030.00. Disposition—On official display at the National Museum of American Diplomacy.	Mr. Hamid Karzai, Former President of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Michael R. Pompeo, Secretary of State of the United States.	Silk Samarkand-Bukhara style carpet. Rec'd—7/14/2019. Est. Value—$9,600.00. Disposition—Transferred to GSA.	His Excellency Shavkat Mirziyoyev, President of the Republic of Uzbekistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Michael R. Pompeo, Secretary of State of the United States.	Four-piece metal artwork. Rec'd—9/1/2019. Est. Value—$440.00. Disposition—Transferred to GSA.	His Highness Sheikh Mohammad bin Zayed Al Nahyan, Crown Prince of the United Arab Emirates.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Michael R. Pompeo, Secretary of State of the United States.	William and Son clock. Rec'd—9/17/2019. Est. Value—$1,375.00. Disposition—Pending transfer to GSA.	His Royal Highness Prince Salman bin Hamad Al-Khalifa, Crown Prince, Deputy Supreme Commander, and First Deputy Prime Minister of the Kingdom of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Michael R. Pompeo, Secretary of State of the United States.	Framed print of city of Pacentro. Rec'd—10/1/2019. Est. Value—$425.00. Disposition—Purchased.	The Honorable Guido Angelilli, Mayor of Pacentro, Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Michael R. Pompeo, Secretary of State of the United States.	Five books of Pope Francis' declarations, ceramic tile of the Gardens at the Vatican, Book of Human Fraternity Meeting document. Rec'd—10/4/2019. Est. Value—$490.00. Disposition—On official display at the National Museum of American Diplomacy.	His Holiness Pope Francis	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Michael R. Pompeo, Secretary of State of the United States.	Silver-plated falcon statue. Rec'd—11/5/2019. Est. Value—$590.00. Disposition—On official display at the National Museum of American Diplomacy.	His Excellency Adel Al Jubeir, Minister of State for Foreign Affairs of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Michael R. Pompeo, Secretary of State of the United States.	Large carpet. Rec'd—11/22/2019. Est. Value—$9,800.00. Disposition—Pending transfer to GSA.	His Highness Sheikh Abdullah bin Zayed Al Nahyan, Minister of Foreign Affairs and International Cooperation of the United Arab Emirates.	Non-acceptance would cause embarrassment to donor and U.S. Government

AGENCY: THE DEPARTMENT OF STATE—Continued

[Report of Tangible Gifts Furnished by the Department of State]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Mrs. Susan Pompeo, Spouse of the Secretary of State of the United States.	Candle set. Rec'd—1/8/2019. Est. Value—$525.00. Disposition—Transferred to GSA.	Their Majesties King Abdullah II ibn Al Hussein and Queen Rania Al Abdullah of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mrs. Susan Pompeo, Spouse of the Secretary of State of the United States.	Silver and pearl collar necklace. Rec'd—1/10/2019. Est. Value—$1,925.00. Disposition—On official display at the National Museum of American Diplomacy.	Major General Abbas Kamel, Director of the Egyptian General Intelligence Service.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mrs. Susan Pompeo, Spouse of the Secretary of State of the United States.	Roman glass necklace and earrings and Michal Negrin scarf. Rec'd—3/21/2019. Est. Value—$490.00. Disposition—Purchased.	Mrs. Sara Netanyahu, Spouse of the Prime Minister of the State of Israel.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Sean Lawler, Chief of Protocol of the United States.	Ruby cufflinks. Rec'd—3/6/2019. Est. Value—$1,290.00. Disposition—Transferred to GSA.	Mrs. Barbora Loudova, Head of the Protocol Department and Foreign Relations of the Office of the Government of the Czech Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Thomas Shannon, Under Secretary of State for Political Affairs.	Swarovski crystal phoenix. Rec'd—3/8/2018. Est. Value—$1,700.00. Disposition—Transferred to GSA.	Government of the Republic of Uzbekistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Sahar Khoury-Kincannon, Near East and Africa Political Advisor.	Hermes silk scarf. Rec'd—2/4/2019. Est. Value—$500.00. Disposition—Transferred to GSA.	Mr. Ahmed Krayyem, Chairman of the Salahuddin Local Council, Republic of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Ms. Nicole Fasano, Protocol Officer.	Large carpet. Rec'd—2/14/2019. Est. Value—$780.00. Disposition—Transferred to GSA.	The Government of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Kenneth I. Juster, U.S. Ambassador to the Republic of India.	Red music box and silver picture frame. Rec'd—2/25/2019. Est. Value—$2,180.00. Disposition—Transferred to GSA.	Mr. Mukesh Dhirubhai Ambani, Chairman and Managing Director, Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. George P. Kent, Deputy Assistant Secretary of State, European and Eurasian Bureau.	Silver jug, three cups, and one small plate. Rec'd—5/1/2019. Est. Value—$500.00. Disposition—On official display.	Mr. Shamsaddin Khanbabeyev, Executive Committee Khachmaz, Khahmaz, Republic of Azerbaijan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Ms. Natalie Baker, Chargé d'affaires, Libya External Office.	Omega watch. Rec'd—8/5/2019. Est. Value—$4,083.00. Disposition—Transferred to GSA.	Counsel of the State of Libya.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Ms. Eugenia Davis, United Arab Emirates Desk Officer.	Mozart ballpoint pen and small tray. Rec'd—9/10/2019. Est. Value—$515.00. Disposition—Transferred to GSA.	His Excellency Shayma Gorgash, Deputy Chief of Mission of the United Arab Emirates Embassy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Kyle Maxwell, Senior Protocol Officer.	Baume & Mercier watch. Rec'd—9/16/2019. Est. Value—$790.00. Disposition—Transferred to GSA.	His Royal Highness Prince Salman bin Hamad Al-Khalifa, Crown Prince, Deputy Supreme Commander, and First Deputy Prime Minister of the Kingdom of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Ms. Jennifer Wham, Protocol Officer.	Louis Erard watch. Rec'd—9/16/2019. Est. Value—$790.00. Disposition—Transferred to GSA.	His Royal Highness Prince Salman bin Hamad Al-Khalifa, Crown Prince, Deputy Supreme Commander, and First Deputy Prime Minister of the Kingdom of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable David Hale, Under Secretary of State for Political Affairs.	Marble mantle clock, two books, and jeweled robe with fur collar and matching fur hat. Rec'd—9/2019. Est. Value—$990.00. Disposition—Pending transfer to GSA.	His Excellency Beibut Atamkulov, Minister of Foreign Affairs of the Republic of Kazakhstan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: THE DEPARTMENT OF STATE—Continued

[Report of Tangible Gifts Furnished by the Department of State]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable David Hale, Under Secretary of State for Political Affairs.	Mont Blanc pen and leather notebook. Rec'd—12/10/2019. Est. Value—$490.00. Disposition—Pending transfer to GSA.	His Excellency Elin Suleymanov, Ambassador of the Republic of Azerbaijan to the United States.	Non-acceptance would cause embarrassment to donor and U.S. Government.

[10] The Department is looking into the matter and has an ongoing inquiry.

AGENCY: THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

[Report of Gifts of Travel Furnished by the Administrative Office of the United States Courts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Mark L. Wolf, Senior District Judge, United States District Court for the District of Massachusetts.	GIFT OF TRAVEL: Lodging, Meals, and Transportation (Cali, Colombia). Rec'd—10/13/2019–10/15/2019. Est. Value—$400.00.	Ministry of Foreign Affairs of the Republic of Colombia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Mark L. Wolf, Senior District Judge, United States District Court for the District of Massachusetts.	GIFT OF TRAVEL: Lodging, Meals, and Transportation (Kyiv, Ukraine). Rec'd—11/10/2019—11/12/2019. Est. Value—$593.00.	European Union Anti-Corruption Initiative.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Leonard P. Stark, Chief District Judge, United States District Court for the District of Delaware.	GIFT OF TRAVEL: Travel, Meals, and Entertainment (Seoul, Republic of Korea). Rec'd—10/18/2019. Est. Value—$500.00.	Patent Court, Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Leonard P. Stark, Chief District Judge, United States District Court for the District of Delaware.	GIFT OF TRAVEL: Lodging, Meals, and Transportation (Toronto, Canada) Rec'd—11/13/2019—11/16/2019. Est. Value—$1,151.61.	Federal Court of Canada ..	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: CENTRAL INTELLIGENCE AGENCY

[Report of Tangible Gifts Furnished by the Central Intelligence Agency]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
An Agency Employee	Women's Rolex. Rec'd—5/31/2017. Est. Value—$2,000.00. Disposition—Purchased by recipient.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	A bottle of red wine, two boxes of dates, and four bottles of olive oil. Rec'd—11/27/2017. Est. Value—$1,100.00. Disposition—Disposed.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Women's Rolex. Rec'd—5/26/2018. Est. Value—$8,000.00. Disposition—Disposed.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Men's Rolex. Rec'd—5/26/2018. Est. Value—$8,000.00. Disposition—Disposed.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Men's Rado watch and women's Rado watch. Rec'd—5/30/2018. Est. Value—$3,500.00 Disposition—Disposed.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Cash. Rec'd—9/19/2018. Value—$600.00. Disposition—Pending transfer to the Department of Treasury[11].	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: CENTRAL INTELLIGENCE AGENCY—Continued

[Report of Tangible Gifts Furnished by the Central Intelligence Agency]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
An Agency Employee	Amouage cologne and perfume. Rec'd—1/3/2019. Est. Value—$1,500.00. Disposition—Transferred to GSA.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Two stuffed bears, a vest, a Ralph Lauren sweater, shirt, and hoodie, and a Marc Jacobs shirt. Rec'd—1/7/2019. Est. Value—$525.00. Disposition—Pending transfer to GSA [12].	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Tag Heuer women's watch. Rec'd—2/4/2019. Est. Value—$1,650.00. Disposition—Pending disposal [13].	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Cash. Rec'd—2/13/2019. Value—$18,100.00. Disposition—Pending transfer to the Department of Treasury [14].	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Louis Vuitton wallet and two bottles of cologne. Rec'd—2/13/2019. Est. Value—$1,400.00. Disposition—Pending disposal [15].	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Calvin Klein women's watch and box of frankincense. Rec'd—2/18/2019. Est. Value—$450.00. Disposition—Pending disposal [16].	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Tactical watch, spa product, boxes of dates and sweets. Rec'd—3/5/2019. Est. Value—$725.00. Disposition—Pending disposal.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Baku wool on cotton carpet. Rec'd—3/14/2019. Est. Value—$440.00. Disposition—Pending purchase by the recipient [17].	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Apple watch. Rec'd—3/21/2019. Est. Value—$399.00. Disposition—Pending disposal [18].	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Vaughn Bishop, Deputy Director, Central Intelligence Agency.	Hand-carved table and chairs. Rec'd—4/27/2019. Est. Value—$500.00. Disposition—Pending transfer to GSA [19].	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Certina watch: Rec'd—4/30/2019. Est. Value—$750.00. Disposition—Official Use.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Gina Haspel, Director of the Central Intelligence Agency.	Black enamel glass vase. Rec'd—5/16/2019. Est. Value—$400.00. Disposition—On official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Cash. Rec'd—5/16/2019. Value—$1,053.00. Disposition—Pending transfer to the Department of Treasury [20].	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Ebel watch. Rec'd—6/9/2019. Est. Value—$4,000.00. Disposition—Pending disposal [21].	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Ebel watch. Rec'd—6/9/2019. Est. Value—$4,000.00. Disposition—Pending disposal [22].	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Louis Erard watch. Rec'd—6/11/2019. Est. Value—$700.00. Disposition—Pending disposal [23].	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Louis Erard watch. Rec'd—6/11/2019. Est. Value—$700.00. Disposition—Pending disposal [24].	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: CENTRAL INTELLIGENCE AGENCY—Continued

[Report of Tangible Gifts Furnished by the Central Intelligence Agency]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
An Agency Employee	Omega watch. Rec'd—6/16/2019. Est. Value—$3,000.00. Disposition—Disposed.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	iPhone 7S. Rec'd—6/30/2019. Est. Value—$500.00 Disposition—Pending disposal.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Pewter eagle statue. Rec'd—7/3/2019. Est. Value—$580.00. Disposition—Pending disposal.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Carpet. Rec'd—7/9/2019. Est. Value—$580.00. Disposition—Pending disposal [25].	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Watch. Rec'd—7/10/2019. Est. Value—$500.00. Disposition—Pending disposal [26].	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Garmin watch. Rec'd—7/12/2019. Est. Value—$750.00. Disposition—Pending disposal [27].	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Mont Blanc pen. Rec'd—7/15/2019. Est. Value—$4,000.00. Disposition—Pending disposal [28].	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Original painting. Rec'd—7/16/2019. Est. Value—$4,000.00. Disposition—On official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Rolex watch. Rec'd—9/23/2019. Est. Value—$7,000.00. Disposition—Pending disposal [29].	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Gina Haspel, Director of the Central Intelligence Agency.	Hermes silk shawl. Rec'd—10/28/2019. Est. Value—$500.00. Disposition—Transferred to GSA.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Gina Haspel, Director of the Central Intelligence Agency.	Glass vase. Rec'd—11/6/2019. Est. Value—$500.00. Disposition—On official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Gift card. Rec'd—11/9/2019. Value—$400.00. Disposition—Pending transfer to GSA [30].	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Carpet. Rec'd—11/14/2019. Est. Value—$500.00. Disposition—On official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Cash. Rec'd—12/19/2019. Value—$10,000.00. Disposition—Pending transfer to the Department of Treasury [31].	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.

[11] The information is valid as of the date of receipt from the reporting agency to the Office of the Chief of Protocol.
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AGENCY: THE DEPARTMENT OF ARMY

[Report of Tangible Gifts Furnished by the Department of Army]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Lieutenant General Paul E. Funk II, Commander, Headquarters III Corps.	MK2.1 black Extrema Ration knife engraved with LTG Paul Funk. Rec'd—8/15/2018. Est. Value—$550.00. Disposition—Transferred to GSA.	Brigadier General Roberto Vannacci, Army of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Joseph M. Votel, Commanding General, USCENTCOM.	Two end tables. Rec'd—5/10/2018. Est. Value—$500.0. Disposition—Purchased.	His Excellency Shavkat Mirziyoyev, President of the Republic of Uzbekistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Joseph M. Votel, Commanding General, USCENTCOM.	Mont Blanc pen set. Rec'd—9/2/2018. Est. Value—$508.00. Disposition—Transferred to GSA.	Government of the United Arab Emirates.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Major General Charles Flynn, Assistant Deputy Chief of Staff.	Two gold necklaces. Rec'd—Unknown. Est. Value—$572.00. Disposition—Transferred to GSA.	Major General Kang In-Soon, Army of the Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Major Aaron Poe, Qatar Desk Officer.	Tudor watch. Rec'd—1/15/2019. Est. Value—$1,995.00. Disposition—Transferred to GSA.	General Yousef Al Maliki, Senior National Representative of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Brigadier General Gregory Anderson, Deputy Commanding Officer for Support, USCENTCOM.	Men's Tissot watch. Rec'd—9/12/2018. Est. Value—$850.00. Disposition—Transferred to GSA.	His Excellency Masrour Barzani, Chancellor of the Kurdistan Region Security Forces.	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Joseph M. Votel, Commanding General, USCENTCOM.	Tudor women's watch. Rec'd—9/8/2018. Est. Value—$2,875.00. Disposition—Transferred to GSA.	Government of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Joseph M. Votel, Commanding General, USCENTCOM.	iPhone X. Rec'd—9/8/2018. Est. Value—$1,049.99. Disposition—Transferred to GSA.	Government of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Joseph M. Votel, Commanding General, USCENTCOM.	iPhone X. Rec'd—5/21/2018. Est. Value—$1,049.99. Disposition—Transferred to GSA.	Government of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Joseph M. Votel, Commanding General, USCENTCOM.	Men's Rolex watch. Rec'd—5/21/2018. Est. Value—$14,995.00. Disposition—Transferred to GSA.	Government of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Joseph M. Votel, Commanding General, USCENTCOM.	Men's Rolex watch. Rec'd—9/8/2018. Est. Value—$7,797.00. Disposition—Transferred to GSA.	Government of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Joseph M. Votel, Commanding General, USCENTCOM.	Women's Rolex watch. Rec'd—8/21/2018. Est. Value—$5,275.00. Disposition—Transferred to GSA.	Government of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Joseph M. Votel, Commanding General, USCENTCOM.	Women's Givenchy watch. Rec'd—4/30/2018. Est. Value—$461.00. Disposition—Transferred to GSA.	Unknown Foreign Government Official [32].	Non-acceptance would cause embarrassment to donor and U.S. Government.
Brigadier General James Cooper.	Pequignet watch. Rec'd—8/22/2019. Est. Value—$1,189.00. Disposition—Transferred to GSA.	General Yousef Malallah, Army of the Kingdom of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Major Peter Utley, Chief, USMTM USCENTCOM.	Men's Concord Saratoga watch. Rec'd—9/10/2018. Est. Value—$1,959.00. Disposition—Transferred to GSA.	Major General Fayyadh Ruwaili, Chief of Staff, Army of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: THE DEPARTMENT OF ARMY—Continued

[Report of Tangible Gifts Furnished by the Department of Army]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
General Joseph M. Votel, Commanding General, USCENTCOM.	Women's Ebel watch. Rec'd—3/20/2019. Est. Value—$649.00. Disposition—Transferred to GSA.	Unknown Foreign Government Official [33].	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Joseph M. Votel, Commanding General, USCENTCOM.	Men's Ebel watch. Rec'd—3/20/2019. Est. Value—$1,200.00. Disposition—Transferred to GSA.	Unknown Foreign Government Official [34].	Non-acceptance would cause embarrassment to donor and U.S. Government
General Joseph M. Votel, Commanding General, USCENTCOM.	Dior wallet and pen set. Rec'd—8/22/2019. Est. Value—$1,287.84. Disposition—Transferred to GSA.	Government of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Joseph M. Votel, Commanding General, USCENTCOM.	Ferragamo tie. Rec'd—8/22/2019. Est. Value—$570.00. Disposition—Transferred to GSA.	Unknown Foreign Government Official [35].	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Joseph M. Votel, Commanding General, USCENTCOM.	Leather briefcase. Rec'd—9/4/2018. Est. Value—$415.00. Disposition—Transferred to GSA.	Unknown Foreign Government Official [36].	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Joseph M. Votel, Commanding General, USCENTCOM.	S.T. Dupont and Cutter. Rec'd—9/1/2018. Est. Value—$460.00. Disposition—Transferred to GSA.	General Aoun, Army Chief of Staff, Republic of Liberia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Lieutenant General Mark A. Milley, Chief of Staff, Army.	iPad and iPad case. Rec'd—9/9/2019. Est. Value—$531.99. Disposition—Pending decision [37].	General Andika Perkasa, Army Chief of Staff, Republic of Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mrs. Maria McConville, Spouse of the Vice Chief of Staff, Army.	Stingray material blue clutch purse and Lotus Art de Vivre bag. Rec'd—9/10/2019. Est. Value—$1,490.00. Disposition—Pending decision [38].	Associate Professor Kritika Kongsompong, President of Thai Army Wives Association, Kingdom of Thailand.	Non-acceptance would cause embarrassment to donor and U.S. Government.

[32] Incomplete donor information reported by agency to the Office of the Chief of Protocol.
[33] Incomplete donor information reported by agency to the Office of the Chief of Protocol.
[34] Incomplete donor information reported by agency to the Office of the Chief of Protocol.
[35] Incomplete donor information reported by agency to the Office of the Chief of Protocol.
[36] Incomplete donor information reported by agency to the Office of the Chief of Protocol.
[37] The information is valid as of the date of receipt from the reporting agency to the Office of the Chief of Protocol.
[38] The information is valid as of the date of receipt from the reporting agency to the Office of the Chief of Protocol.

AGENCY: THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

[Report of Tangible Gifts Furnished by the Office of the Director of National Intelligence]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
5 U.S.C. 7342(f)(4)	Malt whisky in a leather case and black ballpoint pen in wooden case. Rec'd—5/9/2019. Est. Value—$2,525.00. Disposition—Official use.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: THE ENVIRONMENTAL PROTECTION AGENCY

[Report of Gifts of Travel Furnished by the Environmental Protection Agency]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Ms. Stephanie Adrian, International Environmental Activities Specialist.	GIFT OF TRAVEL: Travel expenses accepted included meals and incidentals while in San Jose, Costa Rica. Rec'd—3/22/2019. Est. Value—$530.00.	Industrial Development Organization, United Nations.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: THE ENVIRONMENTAL PROTECTION AGENCY—Continued

[Report of Gifts of Travel Furnished by the Environmental Protection Agency]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Dr. Neil Chernoff, Research Scientist, Office of Research and Development, Public Health and Integrated Toxicology Division.	GIFT OF TRAVEL: Travel expenses accepted included meals, incidental expenses, and in country transportation in Geneva, Switzerland. Rec'd—11/15/2019. Est. Value—$759.00.	World Health Organization	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Allen Davis, Biologist, National Center for Environmental Protection.	GIFT OF TRAVEL: Travel expenses accepted included meals, transportation, incidental expenses while in Geneva Switzerland. Rec'd—03/30/2019. Est. Value—$1,099.00.	World Health Organization	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Michael Doherty, Senior Chemist, Office of Pesticide Programs.	GIFT OF TRAVEL: Travel expenses accepted for ground transportation, meals, and daily expenses while in Ottawa, Canada. Rec'd—4/25/2019. Est. Value—$1,491.00.	Food and Agriculture Organization, United Nations.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Michael Doherty, Senior Chemist, Office of Pesticide Programs.	GIFT OF TRAVEL: Travel expenses accepted for ground transportation, meals, and daily expenses while in Geneva, Switzerland. Rec'd—8/29/2019. Est. Value—$2,354.44.	Food and Agriculture Organization, United Nations.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Garland Shay Fout, Research Microbiologist Emeritus, Biological Measurements Branch, Watershed & Ecosystem Characterization Division, Office of Research and Development.	GIFT OF TRAVEL: Expenses accepted for meals, local transportation, and incidentals while in Geneva, Switzerland. Rec'd—9/12/2019. Est. Value—$1,053.00.	Mr. Satoko Murakami, Technical Officer, JEMRA Secretariat, Department of Food Safety and Zoonoses, World Health Organization.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Eugene Jablonowski, Health Physicist, Region 5 Superfund & Emergency Management Division.	GIFT OF TRAVEL: Travel expenses accepted included lodging, meals, incidental expenses, and local transportation while in Thurso, Dounreay, Wick, Inverness, and London in the United Kingdom. Rec'd—10/05/2019—10/12/2019. Est. Value—$958.55.	International Atomic Energy Agency.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dr. Thomas Luben, Senior Epidemiologist, National Center for Environmental Assessment, Office of Research and Development.	GIFT OF TRAVEL: Travel expenses accepted included meals, local transportation, incidental expenses, and lodging while in Bonn, Germany. Rec'd—06/02/2019—06/07/2019. Est. Value—$1,100.00.	European Centre for Environment and Health, World Health Organization.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dr. Elizabeth Mendez, Senior Science Advisor, Health Effects Division, Office of Pesticide Programs.	GIFT OF TRAVEL: Travel expenses accepted included meals, transportation, incidental expenses and lodging while in Geneva, Switzerland. Rec'd—09/15/2019—09/27/2019. Est. Value—$2,163.00.	Joint World Health Organization/Food and Agriculture Organization Meeting, United Nations.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. David J. Miller	GIFT OF TRAVEL: Travel expenses accepted included payment for local transportation/train fare, hotel, meals, and other incidentals while in Belgium. Rec'd—5/3/2019. Est. Value—$2,847.00.	Food and Agriculture Organization, United Nations.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Jon Richards, EPA R4, RPM and Radiation Expert.	GIFT OF TRAVEL: Travel expenses accepted included meals, transportation, incidental expenses, and lodging while in Sydney, Australia. Rec'd—08/22/2019—08/30/2019. Est. Value—$1,984.39.	Mr. Christophe Xerri, Director, Division of Nuclear Energy, International Atomic Energy Agency.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dr. Elin M. Ulrich, Acting Branch Chief, Advanced Analytical Chemistry Methods Branch, Office of Research and Development.	GIFT OF TRAVEL: Travel expenses included transportation, accommodations, and meals while in Ottawa, Ontario, Canada. Rec'd—11/1/2019. Est. Value—$576.93.	Dr. Yong-Lai Feng, Health Canada.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dr. Timothy J. Wade, Associate Director, Office of Research and Development, Public Health and Environmental Systems Division.	GIFT OF TRAVEL: Travel expenses accepted included meals, incidental expenses, and in country transportation in Geneva, Switzerland. Rec'd—11/10/2019—11/15/2019. Est. Value—$759.00.	World Health Organization	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: THE DEPARTMENT OF JUSTICE

[Report of Tangible Gifts Furnished by the Department of Justice]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable William P. Barr, Attorney General of the United States.	Hand-knotted carpet. Rec'd—6/21/2019. Est. Value—$500.00. Disposition—Transferred to GSA.	His Excellency Dr. Ali Bin Fetais Al Marri, Attorney General of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Brian Coneely, Acting Regional Director, Drug Enforcement Administration.	Bentley watch. Rec'd—6/27/2018. Est. Value—$5,750.00. Disposition—Transferred to GSA.	Mr. Karim Massimov, Chairman of the National Security Committee of the Republic of Kazakhstan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Deputy Assistant Attorney General Bruce C. Swartz.	Leather bag. Rec'd—1/12019. Est. Value—$400.00. Disposition—Transferred to GSA.	Government of the United Arab Emirates.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Deputy Assistant Attorney General Bruce C. Swartz.	Pearl necklace. Rec'd—1/1/2019. Est. Value—$500.00. Disposition—Transferred to GSA.	Government of the People's Republic of Bangladesh.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Deputy Assistant Attorney General Bruce C. Swartz.	Gray Burberry scarf. Rec'd—1/1/2019. Est. Value—$400.00. Disposition—Transferred to GSA.	Government of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Deputy Assistant Attorney General Bruce C. Swartz.	Blue Burberry scarf. Rec'd—1/1/2019. Est. Value—$400.00. Disposition—Transferred to GSA.	Government of the United Arab Emirates.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Todd C. Smith, Country Attaché, Dubai Country Office.	Fendi watch. Rec'd—8/5/2018. Est. Value—$975.00. Disposition—Transferred to GSA.	Mr. Ahmed Bin Khalifa Al-Kuwari, Director General of Drug Enforcement of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: THE NUCLEAR REGULATORY COMMISSION

[Report of Tangible Gifts Furnished by the Nuclear Regulatory Commission]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Kristine L. Svinicki, Chairman, US Nuclear Regulatory Commission.	Portrait of Sheikh Zayed Bin Sultan Al Nahyan. Rec'd—12/23/2019. Est. Value—$700.00. Disposition—On Official Display at the Office of International Programs at the US Nuclear Regulatory Commission Headquarters.	Sheikh Zayed Bin Sultan Al Nahyan, Federal Authority for Nuclear Regulation, United Arab Emirates.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: THE DEPARTMENT OF TRANSPORTATION

[Report of Gift of Travel Furnished by the Department of Transportation]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Mr. Mohammed Yousuf, Research Transportation Specialist.	GIFT OF TRAVEL: Disability Inclusive Road Transport session in Abu Dhabi, United Arab Emirates (airfare, ground transportation, lodging, and meals). Rec'd—10/5/19. Est. Value—Unknown.	Department for Transport, United Kingdom of Great Britain and Northern Ireland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. David Short, Deputy Assistant Secretary for Aviation and International Affairs.	GIFT OF TRAVEL: Tokyo Symposium in Tokyo, Japan (airfare and hotel accommodations.) Rec'd—11/15/19. Est. Value—Unknown.	Japan International Travel and Tourism Institute.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: THE DEPARTMENT OF THE TREASURY

[Report of Tangible Gifts Furnished by the Department of the Treasury]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Steven T. Mnuchin, Secretary of the Treasury.	Carpet. Rec'd—6/20/2019. Est. Value—$499.99. Disposition—On official display [39].	His Excellency Dr. Ali Bin Fetais Al Marri, Attorney General of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Steven T. Mnuchin, Secretary of the Treasury.	Persian silk carpet. Rec'd—11/14/2019. Est. Value—$2,000.00. Disposition—Pending Transfer to GSA [40].	His Excellency Dr. Ali Bin Fetais Al Marri, Attorney General of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Steven T. Mnuchin, Secretary of the Treasury.	Egyptian paperweights, miniature statue, necklace and ring. Rec'd—12/20/2019. Est. Value—$2,831.99. Disposition—Pending Transfer to GSA [41].	Major General Abbas Kamel, Director of the Egyptian General Intelligence Service.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Steven T. Mnuchin, Secretary of the Treasury.	Perfume. Rec'd—12/20/2019. Est. Value—$986.12. Disposition—Pending transfer to GSA [42].	Mr. Lolwah Rashid Al-Khater, State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Steven T. Mnuchin, Secretary of the Treasury.	GIFT OF TRAVEL—Peace to Prosperity Conference—Lodging at the Four Season, Bahrain. Rec'd—6/25–6/27/2019. Est. Value—$772.04.	Government of the Kingdom of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Marshall Billingslea, Assistant Secretary of the Treasury, Terrorist Financing.	Gold coin. Rec'd—7/18/2019. Est. Value—$1,085.00. Disposition—Pending transfer to GSA [43].	Bank Officials of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Marshall Billingslea, Assistant Secretary of the Treasury, Terrorist Financing.	Carpet. Rec'd—11/22/2019. Est. Value—$800.00. Disposition—Pending transfer to GSA [44].	His Excellency Dr. Ali Bin Fetais Al Marri, Attorney General of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald Castellucci, Chief of Staff, Tech Talent Project.	GIFT OF TRAVEL—Peace to Prosperity Conference—Lodging at the Four Seasons, Bahrain. Rec'd—6/20–6/27/2019. Est. Value—$774.04.	Government of the Kingdom of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Zachary McEntee, Deputy Chief of Staff.	GIFT OF TRAVEL—Peace to Prosperity Conference—Lodging at the Four Seasons, Bahrain. Rec'd—6/25–6/27/2019. Est. Value—$773.04.	Government of the Kingdom of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Monica Crowley, Assistant Secretary of the Treasury for Public Affairs.	GIFT OF TRAVEL—Peace to Prosperity Conference—Lodging at the Four Seasons, Bahrain. Rec'd—6/25–6/27/2019. Est. Value $776.04.	Government of the Kingdom of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph Smith, Director of Operations.	GIFT OF TRAVEL—Peace to Prosperity Conference—Lodging at the Four Seasons, Bahrain. Rec'd—6/25–6/27/2019. Est. Value—$777.04.	Government of the Kingdom of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Geoffrey Okamoto, Deputy Assistant Secretary of the Treasury.	GIFT OF TRAVEL—Peace to Prosperity Conference—Lodging at the Four Seasons, Bahrain. Rec'd—6/25–6/27/2019. Est. Value—$780.04.	Government of the Kingdom of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Brent McIntosh, Under Secretary of the Treasury for International Affairs.	GIFT OF TRAVEL—Peace to Prosperity Conference—Lodging at the Four Seasons, Bahrain. Rec'd—6/25–6/27/2019. Est. Value—$781.04.	Government of the Kingdom of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Baylor Myers, Special Assistant White House Liaison.	GIFT OF TRAVEL—Peace to Prosperity Conference—Lodging at the Four Seasons, Bahrain. Rec'd—6/25–6/27/2019. Est. Value—$778.04.	Government of the Kingdom of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Shane Hofer, Advance Representative.	GIFT OF TRAVEL—Peace to Prosperity Conference—Lodging at the Four Seasons, Bahrain. Rec'd—6/22–6/27/2019. Est. Value—$775.04.	Government of the Kingdom of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Ms. Lyndsey Merrill, Policy Advisor.	GIFT OF TRAVEL—Peace to Prosperity Conference—Lodging at the Four Seasons, Bahrain. Rec'd—6/20–6/27/2019. Est. Value—$779.04.	Government of the Kingdom of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: THE DEPARTMENT OF THE TREASURY—Continued

[Report of Tangible Gifts Furnished by the Department of the Treasury]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Mr. Jason Windau, Operations Business Director.	GIFT OF TRAVEL—Peace to Prosperity Conference—Lodging at the Four Seasons, Bahrain. Rec'd—6/25–6/27/2019. Est. Value—$782.04.	Government of the Kingdom of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.

[39] The information is valid as of the date of receipt from the reporting agency to the Office of the Chief of Protocol.
[40] The information is valid as of the date of receipt from the reporting agency to the Office of the Chief of Protocol.
[41] The information is valid as of the date of receipt from the reporting agency to the Office of the Chief of Protocol.
[42] The information is valid as of the date of receipt from the reporting agency to the Office of the Chief of Protocol.
[43] The information is valid as of the date of receipt from the reporting agency to the Office of the Chief of Protocol.
[44] The information is valid as of the date of receipt from the reporting agency to the Office of the Chief of Protocol.

AGENCY: THE NATIONAL SCIENCE FOUNDATION

[Report of Gifts of Travel Furnished by the National Science Foundation]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Mr. Christopher L. Hill, Program Director, Division of Graduate Education, National Science Foundation.	GIFT OF TRAVEL—Travel to Egypt. Rec'd—10/13/2019—11/1/2019. Est. Value—$738.50.	National Science Centre, Republic of Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: UNITED STATES HOUSE OF REPRESENTATIVES

[Report of Gifts of Travel Furnished by the U.S. House of Representatives]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Nancy Pelosi, Speaker of the House of Representatives.	GIFT OF TRAVEL: Lodging at Farmleigh House in Dublin, Ireland. Rec'd—4/16/19–4/18/19. Est. Value—Unknown.	His Excellency Leo Varadkar, Prime Minister of Ireland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Amata Coleman Radewagen, Member of Congress.	GIFT OF TRAVEL: Lodging, meals, and ground transportation for a conference in the Marshall Islands. Rec'd—3/26/19—3/27/19. Est. Value—Unknown.	Her Excellency Hilda C. Heine, President of the Republic of the Marshall Islands.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Brendan Boyle, Member of Congress.	GIFT OF TRAVEL: Lodging at Farmleigh House in Dublin, Ireland. Rec'd—4/16/19–4/18/19. Est. Value—Unknown.	His Excellency Leo Varadkar, Prime Minister of Ireland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph D. Courtney, Member of Congress.	GIFT OF TRAVEL: Lodging at Farmleigh House in Dublin, Ireland. Rec'd—4/16/19–4/18/19. Est. Value—Unknown.	His Excellency Leo Varadkar, Prime Minister of Ireland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Suzan DelBene, Member of Congress.	GIFT OF TRAVEL: Lodging at Farmleigh House in Dublin, Ireland. Rec'd—4/16/19–4/18/19. Est. Value—Unknown.	His Excellency Leo Varadkar, Prime Minister of Ireland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Brian Higgins, Member of Congress.	GIFT OF TRAVEL: Lodging at Farmleigh House in Dublin, Ireland. Rec'd—4/16/19–4/18/19. Est. Value—Unknown.	His Excellency Leo Varadkar, Prime Minister of Ireland.	Non-acceptance would cause embarrassment and U.S. Governments.
The Honorable Steven A. Horsford, Member of Congress.	GIFT OF TRAVEL: Lodging at Farmleigh House in Dublin, Ireland. Rec'd—4/16/19–4/18/19. Est. Value—Unknown.	His Excellency Leo Varadkar, Prime Minister of Ireland.	Non-acceptance would cause embarrassment and U.S. Governments.
The Honorable Daniel Kildee, Member of Congress.	GIFT OF TRAVEL: Lodging at Farmleigh House in Dublin, Ireland. Rec'd—4/16/19–4/18/19. Est. Value—Unknown.	His Excellency Leo Varadkar, Prime Minister of Ireland.	Non-acceptance would cause embarrassment and U.S. Governments.
The Honorable John Larson, Member of Congress.	GIFT OF TRAVEL: Lodging at Farmleigh House in Dublin, Ireland. Rec'd—4/16/19–4/18/19. Est. Value—Unknown.	His Excellency Leo Varadkar, Prime Minister of Ireland.	Non-acceptance would cause embarrassment and U.S. Governments.
The Honorable Richard E. Neal, Member of Congress.	GIFT OF TRAVEL: Lodging at Farmleigh House in Dublin, Ireland. Rec'd—4/16/19–4/18/19. Est. Value—Unknown.	His Excellency Leo Varadkar, Prime Minister of Ireland.	Non-acceptance would cause embarrassment and U.S. Governments.

AGENCY: UNITED STATES HOUSE OF REPRESENTATIVES—Continued

[Report of Gifts of Travel Furnished by the U.S. House of Representatives]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Mr. Jamie E. Lizarraga, Senior Advisor for the Speaker of the House.	GIFT OF TRAVEL: Lodging, cultural program, and meals in Berlin, Germany. Rec'd—11/1/19—11/10/19. Est. Value—$1,850.45.	Ms. Louisa Klewe, Bundestag/Bundesrat of the Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Ryan Woodward, Senior Legislative Assistant.	GIFT OF TRAVEL: Lodging, cultural program, and meals in Berlin, Germany. Rec'd—11/1/19–11/10/19. Est. Value—$1,850.45.	Ms. Louisa Klewe, Bundestag/Bundesrat of the Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Ms. Claudia Marconi, Protocol Associate.	GIFT OF TRAVEL: Lodging, cultural program, and meals in Berlin, Germany. Rec'd—11/1/19–11/10/19. Est. Value—$1,850.45.	Ms. Louisa Klewe, Bundestag/Bundesrat of the Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Devon Lee Murphy, Military Legislative Assistant.	GIFT OF TRAVEL: Lodging, cultural program, and meals in Berlin, Germany. Rec'd—11/1/19–11/10/19. Est. Value—$1,849.00.	Friedrich Ebert Foundation, the Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Paul D. Irving, Sergeant at Arms.	GIFT OF TRAVEL: Lodging at Farmleigh House in Dublin, Ireland. Rec'd—4/16/19–4/18/19. Est. Value—Unknown.	His Excellency Leo Varadkar, Prime Minister of Ireland.	Non-acceptance would cause embarrassment and U.S. Government.
Dr. Brian Monahan, Office of the Attending Physician.	GIFT OF TRAVEL: Lodging at Farmleigh House in Dublin, Ireland. Rec'd—4/16/19–4/18/19. Est. Value—Unknown.	His Excellency Leo Varadkar, Prime Minister of Ireland.	Non-acceptance would cause embarrassment and U.S. Government.
Ms. Lisa Castillo, Assistant Counsel, House Office of Legislative Counsel.	GIFT OF TRAVEL: Lodging, cultural program, and meals in Berlin, Germany. Rec'd—11/1/19–11/10/19. Est. Value—$1,850.45.	Bundestag/Bundesrat of the Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Michael Mucchetti, Chief of Staff to Representative Lloyd Doggett.	GIFT OF TRAVEL: Airfare, local travel costs, lodging, and meals. Rec'd—4/25/19–4/28/19. Est. Value—$2,020.00.	Mr. Knut Dethlefsen, FES Representative to the United States and Canada.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Minsu Crowder-Han, Policy Advisor.	GIFT OF TRAVEL: Lodging, cultural program, and meals in Berlin, Germany. Rec'd—11/1/19–11/10/19. Est. Value—$1,863.00.	Bundestag/Bundesrat of the Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: UNITED STATES SENATE

[Report of Tangible Gifts and Gifts of Travel Furnished by the United States Senate]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Sherrod Brown, United States Senator.	Silver and lapis ring. Rec'd—8/23/2009. Est. Value—$500.00. Disposition—On official display in the Secretary of the Senate.	His Excellency Dr. Sayed Mohammad Amin Fatimie, Minister of Public Health, Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Tammy Duckworth, United States Senator.	Gold-plated commemorative plaque. Rec'd—7/18/2019. Est. Value—$150.00. Disposition—Pending in the Hart Senate Office Building, Room 524[45].	Dr. Fadli Zon, Vice Speaker of the House of Representatives, Republic of Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Tammy Duckworth, United States Senator.	Blue tea set. Rec'd—10/16/2019. Est. Value—$300.00. Disposition—On official display in the Secretary of the Senate.	His Excellency Chuan Leekpai, President of the National Assembly and Speaker of the House of Representatives, Kingdom of Thailand.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Tammy Duckworth, United States Senator.	Pearl-colored tea set. Rec'd—10/16/2019. Est. Value—$250.00. Disposition—On official display in the Secretary of the Senate.	The Royal Family of the Kingdom of Thailand.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Lindsey Graham, United States Senator.	Silk carpet. Rec'd—7/23/2019. Est. Value—$3,000.00. Disposition—On official display in Secretary of the Senate.	General Qamar Laved Bajwa, Chief of Army Staff, Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: UNITED STATES SENATE—Continued

[Report of Tangible Gifts and Gifts of Travel Furnished by the United States Senate]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Robert Menendez, United States Senator.	GIFT OF TRAVEL: Air transportation in Colombia. Rec'd—7/4/2019. Est. Value—Unknown.	National Police of the Republic of Colombia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Christopher Murphy, United States Senator.	GIFT OF TRAVEL: Transportation in Jordan via the Royal Jordanian Air Force. Rec'd—4/26/2019. Est. Value—Unknown.	His Majesty King Abdullah II ibn Al Hussein, King of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable James E. Risch, United States Senator.	Bottle of Azerbaijani Cognac. Rec'd—12/20/2018. Est. Value—$300.00. Disposition—Pending in the office of the Secretary of the Senate [46].	His Excellency Elin Suleymanov, Ambassador of the Republic of Azerbaijan to the United States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Mitt Romney, United States Senator.	Wagyu Meat Products. Rec'd—3/13/2019. Est. Value—$500.00. Disposition—Disposed of.	His Majesty King Abdullah II ibn Al Hussein, King of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Mitt Romney, United States Senator.	GIFT OF TRAVEL: Transportation in Jordan via the Royal Jordanian Air Force. Rec'd—4/26/2019. Est. Value—Unknown.	His Majesty King Abdullah II ibn Al Hussein, King of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Richard C. Shelby, United States Senator.	Set of assorted silver boxes, dishes, and trays. Rec'd—9/29/2019. Est. Value—$200.00. Disposition—On official display in the Secretary of the Senate.	His Excellency Nasser Bourita, Minister of Foreign Affairs and International Cooperation of the Kingdom of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Matt Waldrip, Chief of Staff, Office of Senator Mitt Romney.	GIFT OF TRAVEL: Transportation in Jordan via the Royal Jordanian Air Force. Rec'd—4/26/2019. Est. Value—Unknown.	His Majesty King Abdullah II ibn Al Hussein, King of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Matthew Duss, Foreign Policy Advisor, Office of Senator Bernard Sanders.	GIFT OF TRAVEL: Transportation from Germany to France, local transportation within France, lodging and meals. Rec'd—4/25–4/28/2019. Est. Value—Unknown.	Government of the Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Ms. Jessica Elledge, Foreign Policy Advisor, Office of Senator Christopher Murphy.	GIFT OF TRAVEL: Transportation in Jordan via the Royal Jordanian Air Force. Rec'd—4/26/2019. Est. Value—Unknown.	His Majesty King Abdullah II ibn Al Hussein, King of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Ms. Molly Lazio, Policy Analyst, Committee on Foreign Relations.	Sunshine Amouage perfume. Rec'd—10/8/2019. Est. Value—$400.00. Disposition—Pending in the office of the Secretary of the Senate [47].	Mr. Hashim Taher Al Ibrahim, Business Facilitation Director, Port of Duqm Company SAOC, Sultanate of Oman.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Blake Narendra, Legislative Assistant, Office of Senator Edward J. Markey.	GIFT OF TRAVEL: Local transportation within Germany, lodging, and meals. Rec'd—11/2/2019–11/10/2019. Est. Value—Unknown.	Government of the Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Brandon Yoder, Senior Professional Staff Member, Committee on Foreign Relations.	GIFT OF TRAVEL: Air transportation in Colombia. Rec'd—7/4/2019. Est. Value—Unknown.	National Police of the Republic of Colombia.	Non-acceptance would cause embarrassment to donor and U.S. Government.

[45] The information is valid as of the date of receipt from the reporting agency to the Office of the Chief of Protocol.
[46] The information is valid as of the date of receipt from the reporting agency to the Office of the Chief of Protocol.
[47] The information is valid as of the date of receipt from the reporting agency to the Office of the Chief of Protocol.

AGENCY: THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Report of Travel and Report of Tangible Gifts Furnished by NASA]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Dr. Christyl Johnson, Deputy Director for Technology and Research Investments.	Oil painted photo of space. Rec'd—2/4/2019. Est. Value—$390.00. Disposition—On official display.	Mr. Nicola Sasanelli, SmartSat CRC Senior Advisor, Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.

[FR Doc. 2021–16751 Filed 8–4–21; 8:45 am]
BILLING CODE 4710–20–P

SURFACE TRANSPORTATION BOARD

Release of Waybill Data

The Surface Transportation Board has received a request from the Association of American Railroads (WB21–50–7/28/21) for permission to use data from the Board's 2019 Masked Carload Waybill Sample along with continued access to previously received datasets (1972–2018). A copy of this request may be obtained from the Board's website under docket no. WB21–50.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Alexander Dusenberry, (202) 245–0319.

Eden Besera,

Clearance Clerk.

[FR Doc. 2021–16704 Filed 8–4–21; 8:45 am]
BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2020–0014]

Petition for Approval: Canadian National Railway

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of petition for approval to move to phase 3 of track inspection test program.

SUMMARY: This document provides the public notice that on July 23, 2021, Canadian National Railway (CN) petitioned the Federal Railroad Administration (FRA) to transition from phase 2 to phase 3 of a previously approved Test Program and associated temporary suspension of some visual track inspections. The Test Program is designed to test track inspection technologies (*i.e.,* an autonomous track geometry measurement system) and new operational approaches to track inspections (*i.e.,* combinations of autonomous inspection and traditional visual inspections).

FOR FURTHER INFORMATION CONTACT: Yu-Jiang Zhang, Staff Director, Track and Structures Division, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE, Washington, DC 20590, telephone (202) 493–6460 or email *yujiang.zhang@dot.gov;* Aaron Moore, Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE, Washington, DC 20590, telephone (202) 493–7009 or email *aaron.moore@dot.gov.*

SUPPLEMENTARY INFORMATION: On April 3, 2020, FRA conditionally approved the Test Program and CN's petition under 49 CFR 211.51 to suspend §§ 213.233(b)(3) and 213.233(c) as applied to operations under the Test Program. A copy of the Test Program, FRA's conditional approval of the Test Program, and a previously published **Federal Register** notice explaining FRA's rationale for approving the Test Program and related suspension are available for review in the docket.[1]

As approved, the Test Program included four separate phases over 12 months, as outlined in Exhibit C of the Program.[2] Accordingly, CN began the Test Program on April 19, 2020. On December 6, 2020, CN transitioned from phase 1 to phase 2. Subsequently, CN requested, and FRA approved, an extension of the Test Program until February 19, 2022.

CN is requesting to transition from phase 2 to 3 on October 24, 2021. In support of its request, CN states that it has met the Test Program conditions required to move to phase 3 and has met the Test Program's baseline safety metric of less than 0.19 unprotected geometry defects per 100 miles tested as established in phase 1 of the Test Program. Specifically, for the 90 days prior to petitioning to move to phase 3, CN achieved an average of 0.15 unprotected geometry defects per 100 miles tested.

A copy of the petition, as well as any written communications concerning the petition, if any, are available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by September 7, 2021 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2021–16740 Filed 8–4–21; 8:45 am]
BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2020–0013]

Petition for Approval Extension: CSX Transportation

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of petition for an extension of approval of track inspection test program.

SUMMARY: This document provides the public notice that on July 27, 2021, CSX Transportation (CSX) petitioned the Federal Railroad Administration (FRA) to extend an existing temporary suspension of some visual track inspections to allow for a continuation of a previously approved Test Program designed to test track inspection technologies (*i.e.,* an autonomous track geometry measurement system) and new operational approaches to track inspections (*i.e.,* combinations of autonomous inspection and traditional visual inspections).

FOR FURTHER INFORMATION CONTACT: Yu-Jiang Zhang, Staff Director, Track and Structures Division, at (202) 493–6460

[1] *https://www.regulations.gov/document/FRA-2020-0014-0004* (Test Program); *https://www.regulations.gov/document/FRA-2020-0014-0002* (FRA's approval decision); *https://www.regulations.gov/document/FRA-2020-0014-0003* (FRA's published notice of approval).

[2] *https://www.regulations.gov/document/FRA-2020-0014-0004.*

or *yujiang.zhang@dot.gov;* or Aaron Moore, Attorney, Office of the Chief Counsel, at (202) 493–7009 or *aaron.moore@dot.gov.*

SUPPLEMENTARY INFORMATION: On March 3, 2020, FRA conditionally approved the Test Program and CSX's petition under 49 CFR 211.51 to suspend 213.233(c) as applied to operations under the Test Program. A copy of the Test Program, FRA's conditional approval of the Test Program, and a previously published **Federal Register** notice explaining FRA's rationale for approving the Test Program and related suspension are available for review in the docket.[1]

As approved, the Test Program included three separate phases over 18 months as outlined in Exhibit C of the Program.[2] CSX began the Test Program on March 16, 2020, and it is currently set to expire on September 15, 2021.

CSX is requesting to extend the Test Program until April 1, 2022. CSX states that the Test Program has taken longer than anticipated due to delays automating CSX's data analysis and reporting as well as complications from the COVID–19 pandemic. In support of its request, CSX states that it will continue to comply with all other conditions and requirements of FRA's March 3, 2020, approval letter.

A copy of the petition, as well as any written communications concerning the petition, if any, are available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by September 7, 2021 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of regulations.gov.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2021–16741 Filed 8–4–21; 8:45 am]

BILLING CODE 4910–06–P

[1] *https://www.regulations.gov/document/FRA-2020-0013-0002* (Test Program); *https://www.regulations.gov/document/FRA-2020-0013-0001* (FRA's approval decision); *https://www.regulations.gov/document/FRA-2020-0013-0004* (FRA's published notice of approval).

[2] *https://www.regulations.gov/document/FRA-2020-0013-0002.*

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. DOT–MARAD–2021–0150]

Request for Comments on the Renewal of a Previously Approved Information Collection: U.S. Merchant Marine Academy Candidate Application for Admission

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: The Maritime Administration (MARAD) invites public comments on our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information to be collected will be used to apply for admission to the U.S. Merchant Marine Academy. Collection of information is completed digitally through an online candidate portal. Part I of the Candidate Application is used to establish initial eligibility. The Academic Information Request, Candidate Activities Record, School Official Evaluations and Biographical Essay are used by the USMMA admissions staff and its Candidate Evaluation Board to select the best qualified candidates for the Academy. Result from the administration of the Candidate Fitness Assessment are used to determine physical qualification. Candidates may also submit an optional resume and additional recommendation letters with their application. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Comments must be submitted on or before October 4, 2021.

ADDRESSES: You may submit comments [identified by Docket No. DOT–MARAD–2021–0150] through one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Search using the above DOT docket number and follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Instructions: All submissions must include the agency name and docket number for this rulemaking.

Note: All comments received will be posted without change to *www.regulations.gov* including any personal information provided.

Comments are invited on: (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.

Electronic Access and Filing

A copy of the notice may be viewed online at *www.regulations.gov* using the docket number listed above. A copy of this notice will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *www.FederalRegister.gov* and the Government Publishing Office's website at *www.GovInfo.gov.*

FOR FURTHER INFORMATION CONTACT: CDR Mike Bedryk, CDR USMS, Director of Admissions, 516.726.5641, U.S. Merchant Marine Academy, 300 Steamboat Road, New York, NY 11024, *www.usmma.edu/admissions.*

SUPPLEMENTARY INFORMATION:

Title: U.S. Merchant Marine Academy Candidate Application for Admission.

OMB Control Number: 2133–0010.

Type of Request: Renewal of a Previously Approved Information Collection.

Abstract: Regulations pertaining to the U.S. Merchant Marine Academy

(USMMA) appeared in the **Federal Register** (Vol. 47, No. 98, p. 21811, dated May 20, 1982) as a final rule. Part 310.57(a) of 46 CFR provides for the collection of information from anyone who is a prospect for admission. It states that ''all candidates shall submit an application for admission to the Academy's Admissions Office.'' Thus, the collection of information through the use of a digital application is the primary means by which selections for admission are made. The information collection consists of Part I, the Academic Information Request, Candidate Activities Record, three School Official Evaluation and Biographical Essay and Candidate Fitness Assessment. Part I of the form is completed by individuals wishing to be admitted as students to the U.S. Merchant Marine Academy. The information from the Academic Information Request, Candidate Activities Record, School Official Evaluations and Biographical Essay is used by the USMMA admissions staff and its Candidate Evaluation Board to select the best qualified candidates for the Academy.

Respondents: Individuals desiring to become students at the U.S. Merchant Marine Academy.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 2,000.

Estimated Number of Responses: 2,000.

Estimated Hours per Response: 5 Hours.

Annual Estimated Total Annual Burden Hours: 10,000.

Frequency of Response: Annually.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.93.)

* * *

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021–16714 Filed 8–4–21; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Information Collection Tool Relating to the Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning return by a shareholder of a passive foreign investment company or qualified electing fund.

DATES: Written comments should be received on or before October 4, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317–5751 or Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.

OMB Number: 1545–1002.

Form Number: 8621.

Abstract: Form 8621 is filed by a U.S. shareholder who owns stock in a foreign investment company. The form is used to report income, make an election to extend the time for payment of tax, and to pay an additional tax and interest amount. The IRS uses Form 8621 to determine if these shareholders have correctly reported amounts of income, made the election correctly, and have correctly computed the additional tax and interest amount.

Current Actions: There is no change in the form or paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations and individuals.

Estimated Number of Respondents: 1,333.

Estimated Time per Response: 48 hours, 44 min.

Estimated Total Annual Burden Hours: 64,971.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 29, 2021.

ChaKinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2021–16713 Filed 8–4–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning performance and quality for small wind energy property.

DATES: Written comments should be received on or before October 4, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317–5751 or Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.Dennis@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Property Qualifying for the Energy Credit under Section 48 (Specifically, Performance & Quality for Small Wind Energy Property).

OMB Number: 1545–2259.

Notice Number: Notice 2015–4.

Abstract: Section 48(a)(3)(D) of the Internal Revenue Code allows a credit for energy property which meets, among other requirements, the performance and quality standards (if any) which have been prescribed by the Secretary by regulations (after consultation with the Secretary of Energy), and are in effect at the time of the acquisition of the property. Energy property includes small wind energy property. This notice provides the performance and quality standards that small wind energy property must meet to qualify for the energy credit under section 48.

Current Actions: There is no change in the paperwork burden previously approved by OMB. procedure.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 160.

Estimated Time per Response: 2 hours, 30 min.

Estimated Total Annual Burden Hours: 400.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 29, 2021.

Chakinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2021–16712 Filed 8–4–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Rental and Utility Assistance for Certain Low-Income Veteran Families

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice.

SUMMARY: The Supportive Services for Veteran Families (SSVF) Program has enabled grantees to augment available housing options for homeless Veterans in high rent-burden communities by increasing rental assistance for up to 2 years before recertification. This notice will establish locations where the SSVF grantees can place Veterans in housing with this rental subsidy.

DATES: SSVF grantees can place Veterans in housing with the rental subsidy described in title 38 CFR 62.34(a)(8) in the newly described areas effective the date of this Notice publication date.

FOR FURTHER INFORMATION CONTACT: Mr. John Kuhn, Homeless Program Office, Supportive Services for Veteran Families Program Office, 810 Vermont Avenue NW, Washington, DC 20420; 202–632–8596. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on August 28, 2019, VA published a final rule, which revised its regulations that govern the SSVF Program, which is authorized under 38 U.S.C. 2044, 84 FR 45074. This rule, which amended 38 CFR 62.34(a)(6) and (8), enables SSVF grantees to provide rental assistance where the limited availability of affordable housing makes it difficult to reduce a community's population of homeless Veterans. The lack of affordable housing in the United States has been widely documented with its effect becoming more pronounced during the coronavirus (COVID–19) pandemic. The National Low-Income Housing Coalition maintains a detailed database that shows there is a shortage of affordable housing across every state. As the lack of affordable housing is a national crisis, VA is expanding access to the SSVF resources described in sections 62.34(a)(6) and (8) to all counties and equivalents within the 50 United States (U.S.); the District of Columbia; Puerto Rico; the U.S. Virgin Islands; and Guam. Through these subsidies, the pool of available housing can be expanded as program participants have access to a broader rental market. Section 62.34(a)(8) states that extremely low-income Veteran families and very low-income Veteran families who meet the criteria of section 62.11 may be eligible to receive a rental subsidy for a 2-year period without recertification. Section 62.34(a)(8) further states that the applicable counties will be published annually in the **Federal Register**. As stated in the notice, a family must live in one of these applicable counties to be eligible for this subsidy. The counties will be chosen based on the cost and availability of affordable housing for both individuals and families within that county.

On September 28, 2020, VA published the applicable counties for fiscal year (FY) 2021. As the COVID–19 health emergency has significantly increased the population of Veteran families at-risk of homelessness, SSVF is expanding the applicable counties in FY 2021 to include every county and equivalent in the 50 United States; the District of Columbia; Puerto Rico; the U.S. Virgin Islands; and Guam. This expansion will enable all eligible Veteran families to access this housing option.

Locations: This rental subsidy will be available in all counties and equivalents within the 50 United States; the District of Columbia; Puerto Rico; the U.S. Virgin Islands, and Guam.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on July 30, 2021, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication

electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

Regulation Development Coordinator Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2021–16723 Filed 8–4–21; 8:45 am]

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 18

Marine Mammals; Incidental Take During Specified Activities; North Slope, Alaska; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

Docket No. FWS–R7–ES–2021–0037; FXES111607MRG01–212–FF07CAMM00]

RIN 1018–BF13

Marine Mammals; Incidental Take During Specified Activities; North Slope, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, in response to a request from the Alaska Oil and Gas Association, finalize regulations authorizing the nonlethal, incidental, unintentional take by harassment of small numbers of polar bears and Pacific walruses during year-round oil and gas industry activities in the Beaufort Sea (Alaska and the Outer Continental Shelf) and adjacent northern coast of Alaska. Take may result from oil and gas exploration, development, production, and transportation activities occurring for a period of 5 years. These activities are similar to those covered by the previous 5-year Beaufort Sea incidental take regulations effective from August 5, 2016, through August 5, 2021. This rule authorizes take by harassment only. No lethal take is authorized. We will issue Letters of Authorization, upon request, for specific activities in accordance with these regulations.

DATES: This rule is effective August 5, 2021, and remains effective through August 5, 2026.

ADDRESSES: You may view this rule, the associated final environmental assessment and U.S. Fish and Wildlife Service finding of no significant impact (FONSI), and other supporting material at *http://www.regulations.gov* under Docket No. FWS–R7–ES–2021–0037, or these documents may be requested as described under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 East Tudor Road, MS–341, Anchorage, AK 99503, Telephone 907–786–3844, or Email: *R7mmmregulatory@fws.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Immediate Promulgation

In accordance with the Administrative Procedure Act (APA; 5 U.S.C. 553(d)(3)), we find that we have good cause to make this rule effective less than 30 days after publication. Immediate promulgation of the rule will ensure that the applicant will implement mitigation measures and monitoring programs in the geographic region that reduce the risk of harassment of polar bears (*Ursus maritimus*) and Pacific walruses (*Odobenus rosmarus divergens*) by their activities.

Executive Summary

In accordance with the Marine Mammal Protection Act (MMPA) of 1972, as amended, and its implementing regulations, we, the U.S. Fish and Wildlife Service (Service or we), finalize incidental take regulations (ITRs) that authorize the nonlethal, incidental, unintentional take of small numbers of Pacific walruses and polar bears during oil and gas industry (hereafter referred to as ''Industry'') activities in the Beaufort Sea and adjacent northern coast of Alaska, not including lands within the Arctic National Wildlife Refuge, for a 5-year period. Industry operations include similar types of activities covered by the previous 5-year Beaufort Sea ITRs effective from August 5, 2016, through August 5, 2021 (81 FR 52276).

This rule is based on our findings that the total takings of Pacific walruses (walruses) and polar bears during Industry activities will impact no more than small numbers of animals, will have a negligible impact on these species or stocks, and will not have an unmitigable adverse impact on the availability of these species or stocks for taking for subsistence uses by Alaska Natives. We base our findings on past and proposed future monitoring of the encounters and interactions between these species and Industry; species research; oil spill risk assessments; potential and documented Industry effects on these species; natural history and conservation status information of these species; and data reported from Alaska Native subsistence hunters. We have prepared a National Environmental Policy Act (NEPA) environmental assessment (EA) in conjunction with this rulemaking and determined that this final action will result in a finding of no significant impact (FONSI).

These regulations include permissible methods of nonlethal taking; mitigation measures to ensure that Industry activities will have the least practicable adverse impact on the species or stock, their habitat, and their availability for subsistence uses; and requirements for monitoring and reporting. Compliance with this rule is not expected to result in significant additional costs to Industry, and any costs are minimal in comparison to those related to actual oil and gas exploration, development, and production operations.

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1371(a)(5)(A)) gives the Secretary of the Interior (Secretary) the authority to allow the incidental, but not intentional, taking of small numbers of marine mammals, in response to requests by U.S. citizens (as defined in 50 CFR 18.27(c)) engaged in a specified activity (other than commercial fishing) within a specified geographic region. The Secretary has delegated authority for implementation of the MMPA to the U.S. Fish and Wildlife Service. According to the MMPA, the Service shall allow this incidental taking if we find the total of such taking for a 5-year period or less:

(1) Will affect only small numbers of marine mammals of a species or population stock;

(2) will have no more than a negligible impact on such species or stocks;

(3) will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence use by Alaska Natives; and

(4) we issue regulations that set forth:

(a) Permissible methods of taking;

(b) other means of effecting the least practicable adverse impact on the species or stock and its habitat, and on the availability of such species or stock for subsistence uses; and

(c) requirements for monitoring and reporting of such taking.

If final regulations allowing such incidental taking are issued, we may then subsequently issue Letters of Authorization (LOAs), upon request, to authorize incidental take during the specified activities.

The term ''take'' as defined by the MMPA, means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal (16 U.S.C. 1362(13)). Harassment, as defined by the MMPA, for activities other than military readiness activities or scientific research conducted by or on behalf of the Federal Government, means ''any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild'' (the MMPA defines this as 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'' (the MMPA defines this as Level B harassment) (16 U.S.C. 1362(18)).

The terms ''negligible impact'' and ''unmitigable adverse impact'' are defined in title 50 of the CFR at 50 CFR 18.27 (the Service's regulations governing small takes of marine mammals incidental to specified activities). ''Negligible impact'' is 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. ''Unmitigable adverse impact'' means an impact resulting from the specified activity (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

The term ''small numbers''; is also defined in 50 CFR 18.27. However, we do not rely on that definition here as it conflates ''small numbers'' with ''negligible impacts.'' We recognize ''small numbers'' and ''negligible impacts'' as two separate and distinct requirements for promulgating incidental take regulations (ITRs) under the MMPA (see *Natural Res. Def. Council, Inc.* v. *Evans,* 232 F. Supp. 2d 1003, 1025 (N.D. Cal. 2003)). Instead, for our small numbers determination, we estimate the likely number of takes of marine mammals and evaluate if that take is small relative to the size of the species or stock.

The term ''least practicable adverse impact'' is not defined in the MMPA or its enacting regulations. For this ITR, we ensure the least practicable adverse impact by requiring mitigation measures that are effective in reducing the impact of Industry activities but are not so restrictive as to make Industry activities unduly burdensome or impossible to undertake and complete.

In this ITR, the term ''Industry'' includes individuals, companies, and organizations involved in exploration, development, production, extraction, processing, transportation, research, monitoring, and support services of the petroleum industry that were named in the request for this regulation. Industry activities may result in the incidental taking of Pacific walruses and polar bears.

The MMPA does not require Industry to obtain an incidental take authorization; however, any taking that occurs without authorization is a violation of the MMPA. Since 1993, the oil and gas industry operating in the Beaufort Sea and the adjacent northern coast of Alaska has requested and we have issued ITRs for the incidental take of Pacific walruses and polar bears within a specified geographic region during specified activities. For a detailed history of our current and past Beaufort Sea ITRs, refer to the **Federal Register** at 81 FR 52276, August 5, 2016; 76 FR 47010, August 3, 2011; 71 FR 43926, August 2, 2006; and 68 FR 66744, November 28, 2003. The current regulations are codified at 50 CFR part 18, subpart J (§§ 18.121 to 18.129).

Summary of Request

On June 15, 2020, the Service received a request from the Alaska Oil and Gas Association (AOGA) on behalf of its members and other participating companies to promulgate regulations for nonlethal incidental take of small numbers of walruses and polar bears in the Beaufort Sea and adjacent northern coast of Alaska for a period of 5 years (2021–2026) (hereafter referred to as ''the Request''). We received an amendment to the Request on March 9, 2021, which was deemed adequate and complete. The amended Request is available at *www.regulations.gov* at Docket No. FWS–R7–ES–2021–0037.

The AOGA Request requested regulations that will be applicable to the oil and gas exploration, development, and production, extraction, processing, transportation, research, monitoring, and support activities of multiple companies specified in the Request. This includes AOGA member and other non-member companies that have applied for these regulations and their subcontractors and subsidiaries that plan to conduct oil and gas operations in the specified geographic region. Members of AOGA represented in the Request are: Alyeska Pipeline Service Company, BlueCrest Energy, Inc., Chevron Corporation, ConocoPhillips Alaska, Inc. (CPAI), Eni U.S. Operating Co. Inc. (Eni Petroleum), ExxonMobil Alaska Production Inc. (ExxonMobil), Furie Operating Alaska, LLC, Glacier Oil and Gas Corporation (Glacier), Hilcorp Alaska, LLC (Hilcorp), Marathon Petroleum, Petro Star Inc., Repsol, and Shell Exploration and Production Company (Shell).

Non-AOGA companies represented in the Request are: Alaska Gasline Development Corporation (AGDC), Arctic Slope Regional Corporation (ASRC) Energy Services, Oil Search (Alaska), LLC, and Qilak LNG, Inc. This rule applies only to AOGA members, the non-members noted above, their subsidiaries and subcontractors, and companies that have been or will be acquired by any of the above. The activities and geographic region specified in AOGA's Request and considered in this rule are described below in the sections titled Description of Specified Activities and Description of Specified Geographic Region.

Summary of Changes From the Proposed ITR

In preparing this final rule for the incidental take of polar bears and Pacific walruses, we reviewed and considered comments and information from the public on our proposed rule published in the **Federal Register** on June 1, 2021 (86 FR 29364). We also reviewed and considered comments and information from the public for our draft environmental assessment (EA). Based on those considerations, we are finalizing these regulations with the following changes from our proposed rule:

- The Service revised language to state: ''Aircraft operations within the ITR area should maintain an altitude of 1,500 ft above ground level when safe and operationally possible.'' The inclusion of ''safe and'' is essential to clarify that this altitude recommendation applies only when it is safe to do so (in addition to when it is ''operationally possible'').
- The Service added language to state that, where information is insufficient to evaluate the potential effects of activities on walruses, polar bears, and the subsistence use of these species, holders of an LOA may be required to participate in joint monitoring and/or research efforts to address these information needs and ensure the least practicable impact to these resources.
- The Service added language specifying that a group be defined for both walruses and polar bears as being two or more individuals.
- The Service added language that clarifies that the correct geographic region to which the ITRs will apply is 50 miles offshore, not 200 miles offshore.
- The Service has revised Table 1 in the preamble to include details regarding the sound measurement units and included peak SPL for impulsive sound sources. The Service has also

revised references to past ITR Level B harassment and TTS thresholds.

- The Service has added clarifying language to reflect the numbers of leases and land area in the NPR–A to reflect 307 leases covering 2.6 million acres.
- The Service added a recent peer-reviewed article, ''Polar bear behavioral response to vessel surveys in northeastern Chukchi Sea, 2008–2014'' by Lomac-MacNair et al. (2021), which assisted with the analysis of behavioral responses of polar bears to vessel activity.
- The Service has clarified our discussion regarding the conclusions we drew from the peer-reviewed article ''Aquatic behaviour of polar bears (*Ursus maritimus*) in an increasingly ice-free Arctic.'' Lone, et al. 2018.
- The Service added language to clarify information requirements from applicants for LOAs and have clarified our discussion regarding monthly human occupancy.
- The Service added clarifying language to § 18.126(b)(4) to limit disturbance around dens, including putative and verified dens.
- The Service has removed the term ''other substantially similar'' when describing what proposed activities are covered under these ITRs.

Description of the Regulations

This rule does not authorize or ''permit'' the specified activities to be conducted by the applicant. Rather, it authorizes the nonlethal, incidental, unintentional take of small numbers of Pacific walruses and polar bears that may result from Industry activities based on standards set forth in the MMPA. The Bureau of Ocean Energy Management (BOEM), the Bureau of Safety and Environmental Enforcement, the U.S. Army Corps of Engineers, and the Bureau of Land Management (BLM) are responsible for permitting activities associated with Industry activities in Federal waters and on Federal lands. The State of Alaska is responsible for permitting Industry activities on State lands and in State waters. The regulations include:

- Permissible methods of nonlethal taking;
- Measures designed to ensure the least practicable adverse impact on Pacific walruses and polar bears and their habitat, and on the availability of these species or stocks for subsistence uses; and
- Requirements for monitoring and reporting.

Description of Letters of Authorization (LOAs)

An LOA is required to conduct activities pursuant to an ITR. Under this ITR, entities intending to conduct the specific activities described in these regulations may request an LOA for the authorized nonlethal, incidental Level B harassment of walruses and polar bears. Per AOGA's Request, such entities would be limited to the companies, groups, individuals specified in AOGA's Request, their subsidiaries or subcontractors, and their successors-in-interest. Requests for LOAs must be consistent with the activity descriptions and mitigation and monitoring requirements of the ITR and be received in writing at least 90 days before the activity is to begin. Requests must include (1) an operational plan for the activity; (2) a digital geospatial file of the project footprint, (3) estimates of monthly human occupancy (*i.e.,* a percentage that represents the amount of the month that at least one human is occupying a given location) of project area; (4) a walrus and/or polar bear interaction plan, (5) a site-specific marine mammal monitoring and mitigation plan that specifies the procedures to monitor and mitigate the effects of the activities on walruses and/or polar bears, including frequency and dates of aerial infrared (AIR) surveys if such surveys are required, and (6) Plans of Cooperation (described below). Once this information has been received, we will evaluate each request and issue the LOA if we find that the level of taking will be consistent with the findings made for the total taking allowable under the ITR and all other requirements of these regulations are met. We must receive an after-action report on the monitoring and mitigation activities within 90 days after the LOA expires. For more information on requesting and receiving an LOA, refer to 50 CFR 18.27.

Description of Plans of Cooperation (POCs)

A POC is a documented plan describing measures to mitigate potential conflicts between Industry activities and Alaska Native subsistence hunting. The circumstances under which a POC must be developed and submitted with a request for an LOA are described below.

To help ensure that Industry activities do not have an unmitigable adverse impact on the availability of the species for subsistence hunting opportunities, all applicants requesting an LOA under this ITR must provide the Service documentation of communication and coordination with Alaska Native communities potentially affected by the Industry activity and, as appropriate, with representative subsistence hunting and co-management organizations, such as the North Slope Borough, the Alaska Nannut Co-Management Council (ANCC), and Eskimo Walrus Commission (EWC), among others. If Alaska Native communities or representative subsistence hunting organizations express concerns about the potential impacts of project activities on subsistence activities, and such concerns are not resolved during this initial communication and coordination process, then a POC must be developed and submitted with the applicant's request for an LOA. In developing the POC, Industry representatives will further engage with Alaska Native communities and/or representative subsistence hunting organizations to provide information and respond to questions and concerns. The POC must provide adequate measures to ensure that Industry activities will not have an unmitigable adverse impact on the availability of walruses and polar bears for Alaska Native subsistence uses.

Description of Specified Geographic Region

The specified geographic region covered by the requested ITR (Beaufort Sea ITR region (Figure 1)) encompasses all Beaufort Sea waters (including State waters and Outer Continental Shelf waters as defined by BOEM) east of a north-south line extending from Point Barrow (N71.39139, W156.475, BGN 1944) to the Canadian border, except for marine waters located within the Arctic National Wildlife Refuge (ANWR). The offshore boundary extends 80.5 km (50 mi) offshore. The onshore boundary includes land on the North Slope of Alaska from Point Barrow to the western boundary of ANWR. The onshore boundary is 40 km (25 mi) inland. No lands or waters within the exterior boundaries of ANWR are included in the Beaufort Sea ITR region. The geographical extent of the Beaufort Sea ITR region (approximately 7.9 million hectares (ha) (~19.8 million acres (ac))) is smaller than the region covered in previous regulations (approximately 29.8 million ha (~73.6 million ac) were included in the ITR set forth via the final rule that published at 81 FR 52276, August 5, 2016).

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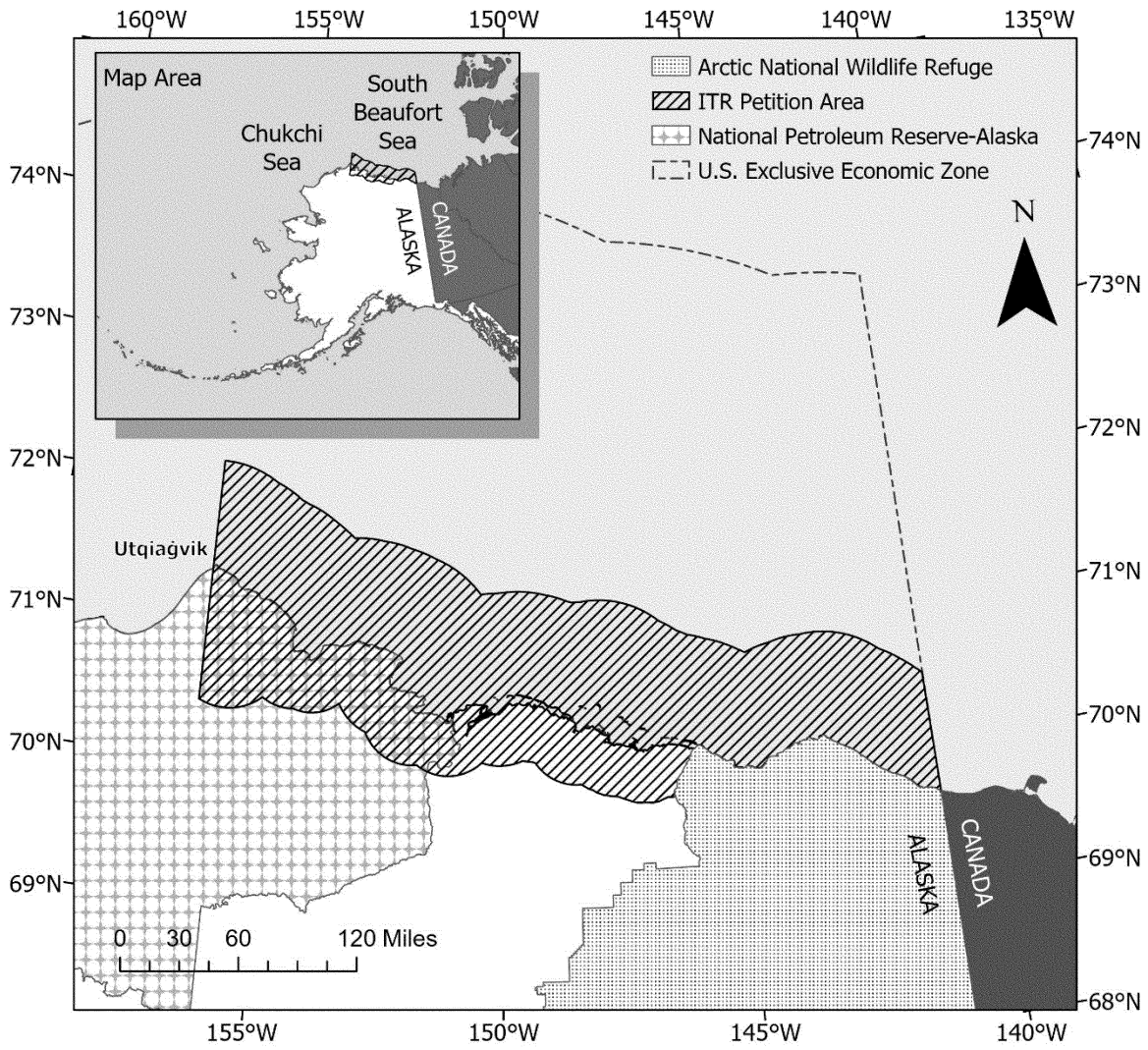

Figure 1—Map of the Beaufort Sea ITR region.

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Description of Specified Activities

This section first summarizes the type and scale of Industry activities anticipated to occur in the Beaufort Sea ITR region from 2021 to 2026 and then provides more detailed specific information on these activities. Year-round onshore and offshore Industry activities are anticipated. During the 5 years that the ITR will be in place, Industry activities are expected to be generally similar in type, timing, and effect to activities evaluated under the prior ITRs. Due to the large number of variables affecting Industry activities, prediction of exact dates and locations of activities is not possible in a request for a 5-year ITR. However, operators must provide specific dates and locations of activities in their requests for LOAs. Requests for LOAs for activities and impacts that exceed the scope of analysis and determinations for this ITR will not be issued. Additional information is available in the AOGA Request for an ITR at: *www.regulations.gov* in Docket No. FWS–R7–ES–2021–0037.

Exploration Activities

AOGA's exploration activities specified in the Request are for the purpose of exploring subsurface geology, water depths, and seafloor conditions to help inform development and production projects that may occur in those areas. Exploration survey activities include geotechnical site investigations, reflection seismic exploration, vibroseis, vertical seismic profiles, seafloor imagery collection, and offshore bathymetry collection. Exploratory drilling and development activities include onshore ice pad and road development, onshore gravel pad and road development, offshore ice road development, and artificial island development.

The location of new exploration activities within the specified geographic region of this rule will be influenced by the location of current leases as well as any new leases acquired via potential future Federal and State of Alaska oil and gas lease sales.

BOEM Outer Continental Shelf Lease Sales

BOEM manages oil and gas leases in the Alaska Outer Continental Shelf (OCS) region, which encompasses 242 million ha (600 million ac). Of that acreage, approximately 26 million ha (~65 million ac) are within the Beaufort Sea Planning Area. Ten lease sales have been held in this area since 1979, resulting in 147 active leases, where 32 exploratory wells were drilled. Production has occurred on one joint

Federal/State unit, with Federal oil production accounting for more than 28.7 million barrels (bbl) (1 bbl = 42 U.S. gallons or 159 liters) of oil since 2001 (BOEM 2016). Details regarding availability of future leases, locations, and acreages are not yet available, but exploration of the OCS may continue during the 2021–2026 timeframe of the ITR. Lease Sale 242, previously planned in the Beaufort Sea during 2017 (BOEM 2012), was cancelled in 2015. BOEM issued a notice of intent to prepare an environmental impact statement (EIS) for the 2019 Beaufort Sea lease sale in 2018 (83 FR 57749, November 16, 2018). The 2019–2024 Draft Proposed Program included three OCS lease sales, with one each in 2019, 2021, and 2023, but has not been approved. Information on the Alaska OCS Leasing Program can be found at: *https://www.boem.gov/about-boem/alaska-leasing-office.*

National Petroleum Reserve—Alaska

The BLM manages the 9.2 million-ha (22.8 million-ac) Natural Petroleum Reserve—Alaska (NPR–A), of which 1.3 million ha (3.2 million ac) occur within the Beaufort Sea ITR region. Lease sales have occurred regularly in the NPR–A; 15 oil and gas lease sales have been held in the NPR–A since 1999. There are currently 307 leases covering more than 1,052,182 ha (2.6 million ac) in the NPR–A. Current operator/ownership information is available on the BLM NPR–A website at *https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/alaska.*

State of Alaska Lease Sales

The State of Alaska Department of Natural Resources (ADNR), Oil and Gas Division, holds annual lease sales of State lands available for oil and gas development. Lease sales are organized by planning area. Under areawide leasing, the State offers all available State acreage not currently under lease within each area annually. AOGA's Request includes activities in the State's North Slope and Beaufort Sea planning areas. Lease sale data are available on the ADNR website at: *https://dog.dnr.alaska.gov/Services/BIFAndLeaseSale.* Projected activities may include exploration, facility maintenance and construction, and operation activities.

The North Slope planning area has 1,225 tracts that lie between the NPR–A and the ANWR. The southern boundary of the North Slope sale area is the Umiat baseline. Several lease sales have been held to date in this leasing area. As of May 2020, there are 1,505 active leases on the North Slope, encompassing 1.13 ha (2.8 million ac), and 220 active leases in the State waters of the Beaufort Sea, encompassing 244,760 ha (604,816 ac). The Beaufort Sea Planning Area encompasses a gross area of approximately 687,966 ha (1.7 million ac) divided into 572 tracts ranging in size from 210 to 2,330 ha (520 to 5,760 ac).

Development Activities

Industry operations during oil and gas development may include construction of roads, pipelines, waterlines, gravel pads, work camps (personnel, dining, lodging, and maintenance facilities), water production and wastewater treatment facilities, runways, and other support infrastructure. Activities associated with the development phase include transportation activities (automobile, airplane, and helicopter); installation of electronic equipment; well drilling; drill rig transport; personnel support; and demobilization, restoration, and remediation work. Industry development activities are often planned or coordinated by unit. A unit is composed of a group of leases covering all or part of an accumulation of oil and/or gas. Alaska's North Slope oil and gas field primary units include: Duck Island Unit (Endicott), Kuparuk River Unit, Milne Point Unit, Nikaitchuq Unit, Northstar Unit, Point Thomson Unit, Prudhoe Bay Unit, Badami Unit, Oooguruk Unit, Bear Tooth Unit, Pikka Unit, and the Colville River and Greater Mooses Tooth Units, which for the purposes of this ITR are combined into the Western North Slope.

Production Activities

North Slope production facilities occur between the oilfields of the Alpine Unit in the west to Badami and Point Thomson in the east. Production activities include building operations, oil production, oil transport, facilities, maintenance and upgrades, restoration, and remediation. Production activities are long-term and year-round activities whereas exploration and development activities are usually temporary and seasonal. Alpine and Badami are not connected to the road system and must be accessed by airstrips, barges, and seasonal ice roads. Transportation on the North Slope is by automobile, airplanes, helicopters, boats, vehicles with large, low-pressure tires called Rolligons, tracked vehicles, and snowmobiles. Aircraft, both fixed wing and helicopters, are used for movement of personnel, mail, rush-cargo, and perishable items. Most equipment and materials are transported to the North Slope by truck or barge. Much of the barge traffic during the open-water season unloads from West Dock.

Oil pipelines extend from each developed oilfield to the Trans-Alaska Pipeline System (TAPS). The 122-cm (48-in)-diameter TAPS pipeline extends 1,287 km (800 mi) from the Prudhoe Bay oilfield to the Valdez Marine Terminal. Alyeska Pipeline Service Company conducts pipeline operations and maintenance. Access to the pipeline is primarily from established roads, such as the Spine Road and the Dalton Highway, or along the pipeline right-of-way.

Oil and Gas Support Activities

In addition to oil and gas production and development activities, support activities are often performed on an occasional, seasonal, or daily basis. Support activities streamline and provide direct assistance to other activities and are necessary for Industry working across the North Slope and related areas. Several support activities are defined in AOGA's Request and include: Placement and maintenance of gravel pads, roads, and pipelines; supply operations that use trucks or buses, aircraft (fixed-wing or rotor-wing), hovercrafts, and barges/tugs to transport people, personal incidentals (food, mail, cargo, perishables, and personal items) between Units and facilities; pipeline inspections, maintenance dredging and screeding operations; and training for emergency response and oil spill response. Some of these activities are seasonal and performed in the winter using tundra-appropriate vehicles, such as road, pad, and pipeline development and inspections. Field and camp-specific support activities include: Construction of snow fences; corrosion and subsidence control and management; field maintenance campaigns; drilling; well work/work-overs; plugging and abandonment of existing wells; waste handling (oil field wastes or camp wastes); camp operations (housekeeping, billeting, dining, medical services); support infrastructure (warehousing and supplies, shipping and receiving, road and pad maintenance, surveying, inspection, mechanical shops, aircraft support and maintenance); emergency response services and trainings; construction within existing fields to support oil field infrastructure and crude oil extraction; and transportation services by a variety of vehicles. Additional details on each of these support activities can be found in AOGA's Request.

Specific Ongoing and Planned Activities at Existing Oil and Gas Facilities for 2021–2026

During the regulatory period, exploration and development activities are anticipated to occur in the offshore and continue in the current oil field units, including those projects identified by Industry, below.

Badami Unit

The Badami oilfield resides between the Point Thomson Unit and the Prudhoe Bay Unit, approximately 56 km (35 mi) east of Prudhoe Bay. No permanent road connections exist from Badami to other Units, such as Prudhoe Bay or the Dalton Highway. The Badami Unit consists of approximately 34 ha (85 ac) of tundra, including approximately 9.7 km (6 mi) of established industrial duty roads connecting all infrastructure, 56 km (35 mi) of pipeline, one gravel mine site, and two gravel pads with a total of 10 wells. The oilfield consists of the following infrastructure and facilities: A central processing facility (CPF) pad, a storage pad, the Badami airstrip pad, the Badami barge landing, and a 40.2-km (25-mi) pipeline that connects to Endicott.

During the summer, equipment and supplies are transported to Badami by contract aircraft from Merrill Field in Anchorage or by barge from the West Dock in Prudhoe Bay. During winter drilling activities, a tundra ice road is constructed near the Badami/Endicott Pipeline to tie-in to the Badami CPF pad. This winter tundra ice road is the only land connection to the Dalton Highway and the Badami Unit. Light passenger trucks, dump trucks, vacuum trucks, tractor trailers, fuel trucks, and heavy equipment (*e.g.,* large drill rigs, well simulation equipment) travel on this road during the winter season. This road also opens as an ADNR-permitted trail during off-years where Tuckers (a brand of tracked vehicle) or tracked Steigers (a brand of tractor) use it with sleds and snow machines. Activities related to this opening would be limited to necessary resupply and routine valve station maintenance along the oil sales pipeline corridor.

Flights from Anchorage land at Badami Airfield (N70.13747, W147.0304) for a total of 32 flight legs monthly. Additionally, Badami transports personnel and equipment from Deadhorse to Badami Airfield. Approximately 24 cargo flights land at Badami Airfield annually depending on Unit activities and urgency. Badami also conducts aerial pipeline inspections. These flights are typically flown by smaller, charter aircrafts at a minimum altitude of 305 m (1,000 ft) at ground level.

Tundra travel at Badami takes place during both the summer and winter season. Rolligons and Tuckers (off-road vehicles) are used during the summer for cargo and resupply activities but may also be used to access any pipelines and valve pads that are not located adjacent to the gravel roads. During periods of 24-hour sunlight, these vehicles may operate at any hour. Similar off-road vehicles are used during the winter season for maintenance and inspections. Temporary ice roads and ice pads may be built for the movement of heavy equipment to areas that are otherwise inaccessible for crucial maintenance and drilling. Ice road construction typically occurs in December or January; however, aside from the previously mentioned road connecting Badami to the Dalton Highway, ice roads are not routinely built for Badami. Roads are only built on an as-needed basis based on specific projects. Other activities performed during the winter season include pipeline inspections, culvert work, pigging, ground surveillance, geotechnical investigations, vertical support member (VSM) leveling, reconnaissance routes (along snow machine trails), and potentially spill response exercises. Road vehicles used include pickup trucks, vacuum trucks, loaders, box vans, excavators, and hot water trucks. Standard off-road vehicles include, but are not limited to, Tuckers, Rolligons, and snow machines.

On occasion, crew boats, landing craft, and barges may transport personnel and equipment from West Dock to Badami from July through September, pending the open-water window. Tugs and barges may also be used depending on operational needs. These trips typically go from Badami to other coastal Units, including Endicott and Point Thomson.

Badami performs emergency response and oil spill trainings during both open-water and ice-covered seasons. Smaller vessels (*i.e.,* zodiacs, aluminum work boats, air boats, and bay-class boats) typically participate in these exercises. Future classes may utilize other additional equipment or vessels as needed.

Currently, 10 wells have been drilled across the lifespan of the Badami Unit. Repair and maintenance activities on pipelines, culverts, ice roads, and pads are routine within the Badami Unit and occur year-round. Badami's current operator has received a permit from the U.S. Army Corps of Engineers to permit a new gravel pad (4.04 ha [10 ac]) located east of the Badami Barge Landing and a new gravel pit. This new pad would allow the drilling of seven more deployment wells at Badami. All new wells would be tied back to the CPF.

Duck Island Unit (Endicott)

Historically called the Endicott Oilfield, the Duck Island Unit is located approximately 16 km (10 mi) northeast of Prudhoe Bay. Currently, Hilcorp Alaska, LLC operates the oilfield. Endicott is the first offshore oilfield to continuously produce oil in the Arctic area of the United States and includes a variety of facilities, infrastructure, and islands. Endicott consists of 210 ha (522 ac) of land, 24 km (15 mi) of roads, 43 km (24 mi) of pipelines, two pads, and no gravel mine sites. The operations center and the processing center are situated on the 24-ha (58-ac) Main Production Island (MPI). To date, 113 wells have been drilled in efforts to develop the field, of which 73 still operate. Additionally, two satellite fields (Eider and Sag Delta North) are drilled from the Endicott MPI. Regular activities at Endicott consist of production and routine repair on the Endicott Sales Oil Pipeline, culverts, bridges, and bench bags. A significant repair on a bridge called the ''Big Skookum'' is expected to occur during the duration of this ITR.

Endicott's facilities are connected by gravel roads and are accessible through the Dalton Highway year-round via a variety of vehicles (pickup trucks, vacuum trucks, loaders, box vans, excavators, hot water trucks). Required equipment and supplies are brought in first from Anchorage and Fairbanks, through Deadhorse, and then into Endicott. Traffic is substantial, with heavy traffic on routes between processing facilities and camps. Conversely, drill site access routes experience much less traffic with standard visits occurring twice daily (within a 24-hour period). Traffic at drill sites increases during active drilling, maintenance, or other related projects and tends to subside during normal operations. Hilcorp uses a variety of vehicles on these roads, including light passenger trucks, heavy tractor-trailer trucks, heavy equipment, and very large drill rigs. Ice roads are only built on an as-needed basis for specific projects.

Air travel via helicopter from an established pad on Endicott to Deadhorse Airport is necessary only if the access bridges are washed out (typically mid to late May to the start of June). During such instances, approximately 20–30 crew flights would occur along with cargo flights about once a week. Hilcorp also performs

maternal polar bear den surveys via aircraft.

Hilcorp performs tundra travel work during the winter season (December–May; based on the tundra opening dates). Activities involving summer tundra travel are not routine, and pipeline inspections can be performed using established roads. During the winter season, off-road vehicles (*e.g.,* Tuckers, snow machines, or tracked utility vehicles called Argo centaurs) perform maintenance, pipeline inspections, culvert work, pigging, ground surveillance, VSM leveling, reconnaissance routes (snow machine trails), spill response exercises, and geotechnical investigations across Endicott.

Tugs and barges are used to transport fuel and cargo between Endicott, West Dock, Milne, and Northstar during the July to September period (pending the open-water period). Trips have been as many as over 80 or as few as 3 annually depending on the needs in the Unit, and since 2012, the number of trips between these fields has ranged from 6 to 30. However, a tug and barge have been historically used once a year to transport workover rigs between West Dock, Endicott, and Northstar. Endicott performs emergency response and oil spill trainings during both the open-water and ice-covered seasons. Smaller vessels (*i.e.,* zodiacs, Kiwi Noreens, bay-class boats) participate in these exercises; however, future classes may utilize other additional equipment or vessels (*e.g.,* the ARKTOS amphibious emergency escape vehicle) as needed. ARKTOS training will not be conducted during the summer.

Kuparuk River Unit

ConocoPhillips Alaska, Inc., operates facilities in the Kuparuk River Unit. This Unit is composed of several additional satellite oilfields (Tarn, Palm, Tabasco, West Sak, and Meltwater) containing 49 producing drill sites. Collectively, the Greater Kuparuk Area consists of approximately 1,013 ha (2,504 ac) made up of 209 km (130 mi) of gravel roads, 206 km (128 mi) of pipelines, 4 gravel mine sites, and over 73 gravel pads. A maximum of 1,200 personnel can be accommodated at the Kuparuk Operations Center and the Kuparuk Construction Camp. The camps at the Kuparuk Industrial Center are used to accommodate overflow personnel.

Kuparuk's facilities are all connected by gravel road and are accessible from the Dalton Highway year-round. ConocoPhillips utilizes a variety of vehicles on these roads, including light passenger trucks, heavy tractor-trailer trucks, heavy equipment, and very large drill rigs. Required equipment and supplies are flown in through Deadhorse and then transported via vehicle into the Kuparuk River Unit. Traffic has been noted to be substantial, with specific arterial routes between processing facilities and camps experiencing the heaviest use. Conversely, drill site access routes experience much less traffic with standard visits to drill sites occurring at least twice daily (within a 24-hour period). Traffic at drill sites increases during drilling activities, maintenance, or other related projects and tends to subside during normal operations.

The Kuparuk River Unit uses its own private runway (Kuparuk Airstrip; N70.330708, W149.597688). Crew and personnel are transported to Kuparuk on an average of two flights per day. Flights arrive into Kuparuk only on the weekdays (Monday through Friday). Year round, approximately 34 flights per week transport crew and personnel between Kuparuk and Alpine Airport. ConocoPhillips plans to replace the passenger flights from Alpine to Kuparuk in 2021 with direct flights to both Alpine and Kuparuk from Anchorage. These flights are expected to occur five times weekly and will replace the weekly flights from Alpine to Kuparuk. Cargo is also flown into Kuparuk on personnel flights. The single exception would be for special and specific flights when the Spine road is blocked. Occasionally, a helicopter will be used to transport personnel and equipment within the Kuparuk River Unit. These flights generally occur between mid-May and mid-September and account for an estimated 50 landings annually in Kuparuk. The location and duration of these flights are variable, and helicopters could land at the Kuparuk Airstrip or remote locations on the tundra. However, only 4 of the estimated 50 landings are within 3.2 km (5 mi) of the coast.

ConocoPhillips flies surveys of remote sections of the Kuparuk crude pipeline one to two times weekly during summer months as well as during winter months when there is reduced visibility from snow cover. During winter months, maternal den surveys are also performed using aircraft with mounted AIR cameras. Off-road vehicles (such as Rolligons and Tuckers) are used for maintenance and inspection of pipelines and power poles that are not located adjacent to the gravel roads. These vehicles operate near the road (152 m [500 ft]) and may operate for 24 hours a day during summer months. During winter months, temporary ice roads and pads are built to move heavy equipment to areas that may be inaccessible. Winter tundra travel distances average approximately 1,931 km (1,200 mi) with ice roads averaging approximately 17.7 km (11 mi) and may occur at any hour of the day. Dredging and screeding occur annually to the extent necessary for safety, continuation of seawater flow, and dock stability at the Kuparuk saltwater treatment plant intake and at Oliktok dock. Dredging occurs within a 1.5-ha (3.7-ac) area, and screeding occurs within a 1-ha (2.5-ac) area. Operations are conducted during the open-water season (May to October annually). Removed material from screeding and dredging is deposited in upland areas above the high tide, such as along the Oliktok causeway and saltwater treatment plant (STP) pad. ConocoPhillips removes approximately 0.6 to 1.1 m (2 to 3.5 ft) of sediment per year. Dredging activities typically last for 21 days, and screeding activities typically last 12 days annually. Boats are also used to perform routine maintenance as needed on the STP outfalls and inlets. ConocoPhillips infrequently has marine vessel traffic at the Oliktok Dock.

ConocoPhillips performs emergency response and oil spill trainings during both open-water and ice-covered seasons. Smaller vessels (*i.e.,* zodiacs, aluminum work boats, air boats, and bay-class boats) typically participate in these exercises. Future classes may utilize other additional equipment or vessels as needed.

The Willow Development Project, which is described in full in *Planned Activities at New Oil and Gas Facilities for 2021–2026,* would lead to increased activity through the Kuparuk River Unit. Prefabricated modules would be transported through the Unit. Module transportation involves an increase in road, aircraft, and vessel traffic resulting in the need for gravel road and gravel pad modifications, ice road and ice pad construction, and sea floor screeding. During the 2023 summer season, gravel hauling and placement to modify existing roads and pads used in support of the Willow Development would take place. An existing 12-acre gravel pad located 13.2 km (2 mi) south of the Oliktok Dock would require the addition of 33,411 cubic m (43,700 cubic yd) of gravel, increasing pad thickness to support the weight of the modules during staging. However, this addition of gravel would not impact the current footprint of the pad. Additionally, ConocoPhillips plans to widen six road curves and add four 0.2-ha (0.5-ac) pullouts between the Oliktok Dock and Drill Site 2P as well as increase the thickness of the 3.2-km (2-

mi) gravel road from the Oliktok Dock to the staging pad—requiring approximately 30,811 cubic m (40,300 yd) of gravel and resulting in an increase in footprint of the gravel road by <0.4 ha (<0.1 ac). Twelve culverts are estimated to be extended within this part of the gravel road to accommodate the additional thickness (approximately five culverts per mile). This would yield a new gravel footprint with an additional 2 ha (5.0 ac) and 90,752 cubic m (118,700 cubic yd). In 2025, a 6.1-ha (15-ac) ice pad, for camp placement, and an ice road for module transportation, would be constructed in association with the Willow Project. The planned location is near Drill Site 2P, over 32.2 km (20 mi) away from the coastline.

An increase in road traffic to Kuparuk is expected to begin in 2023 and continue into the summer of 2026. Activities would mostly consist of the transportation of freight, equipment, and support crews between Oliktok Point, the Kuparuk Airport, and the NPR–A. The number of weekly flights will also increase with an average of 6 additional weekly flights in 2023, 4 additional flights per week in 2024, 14 additional flights per week in 2025, and 4 additional flights per week in 2026. Eight barges would deliver the prefabricated modules and bulk material to Oliktok Dock using existing and regularly used marine transportation routes in the summer of 2024 and 2026.

Due to the current depths of water at the Oliktok Dock (2.4 m [8 ft]), lightering barges (barges that transfer cargo between vessels to reduce a vessel's draft) would be used to support the delivery of large modules to the Dock. The location of the lightering transfer would be approximately 3.7 km (2.3 mi) north of Oliktok Dock in 3.05 m (10 ft) of water. Screeding operations would occur during the summer open-water season 2022–2024 and 2026 starting mid-July and take approximately one week to complete. The activities would impact an area of 3.9 ha (9.6 ac) and an additional hectare (2.5 ac) in front of the Oliktok Dock to facilitate the unloading of the lightering barges. Bathymetry measurements would be taken after to confirm the appropriate conditions of the screeded seafloor surface.

Milne Point Unit

The Milne Point Unit is located 56 km (35 mi) northwest of Prudhoe Bay, producing from three main pools, including Kuparuk, Schrader Bluff, and Sag River. The total development area of Milne Point is 182 ha (450 ac), including 80 ha (198 ac) of 14 gravel pads, 54 km (33 mi) of gravel roads and mines, 161 km (100 mi) of pipelines, and over 330 wells.

Milne Point's facilities are connected by gravel roads and are accessible by the Dalton Highway year-round via a variety of vehicles (pickup trucks, vacuum trucks, loaders, box vans, excavators, hot water trucks). Required equipment and supplies are brought in first from Anchorage and Fairbanks, through Deadhorse, and then into the Milne Point Unit. Arterial roads between processing facilities and camps experience heavy traffic use. Conversely, drill site access routes experience much less traffic, with standard visits to drill sites occurring twice daily (within a 24-hour period). Traffic at drill sites increases during drilling activities, maintenance, or other related projects and tends to subside during normal operations. Industry uses a variety of vehicles on these roads, including light passenger trucks, heavy tractor-trailer trucks, heavy equipment, and very large drill rigs.

Air travel via helicopter from an established pad (N70.453268, W149.447530) to Deadhorse Airport is necessary only if the access bridges are washed out (typically mid to late May to the start of June). During such instances, approximately 20–30 crew flights would occur, along with cargo flights, about once a week. Hilcorp also performs maternal polar bear den surveys via aircraft.

Hilcorp uses off-road vehicles (Rolligons and Tuckers) for tundra travel during summer months to access any pipelines and power poles not found adjacent to the gravel roads. During the winter seasons, temporary ice roads and ice pads are built as needed across the Unit to move heavy equipment to areas otherwise inaccessible. Hilcorp also uses their off-road vehicles (Tuckers, snow machines, and Argo centaurs) during the winter to perform maintenance and inspections. Additionally, road vehicles (pickup trucks, vacuum trucks, loaders, box vans, excavators, and hot water trucks) are used to perform pipeline inspections, culvert work, pigging, ground surveillance, VSM leveling, reconnaissance routes (snow machine trails), potential spill response exercises, and geotechnical investigations.

There are 14 pads and 2 gravel mine sites within the Milne Point Unit. Twenty-eight new wells are expected to be drilled over the next 7 years. Repair activities are routine at Milne Point and occur on pipelines, culverts, ice roads, and pads. Hilcorp also has plans to continue development on Milne Point and will be running two to three more drilling rigs over the next 5 years—requiring several pad expansions to support them. Hilcorp plans to expand six pads, including: S Pad (4.5 ha [11 ac]), I Pad (0.81 ha [2 ac]), L Pad (0.81 ha [2 ac]), Moose Pad (0.81 ha [2 ac]), B Pad (2.1 ha [5.3 ac]), and E Pad (0.4 ha [1 ac]). Additionally, Hillcorp's proposed Raven Pad is projected to be built in 2021 between the L and F Pads. This pad will be 12.1 ha (30 ac) and contain various facilities, pipelines, tie-ins, a new pipeline/VSM along existing routes connecting F Pad to CFP and 45 wells.

Hilcorp is also planning to drill at least 28 new wells with a potential for more over the period of the ITR. New facilities will be installed for polymer injections, flowlines for new wells, pipelines, camps, tanks, and main facility improvements. This will require the development of new gravel pits for mining. Some of the new facilities planned to be built include: Upgrades to Moose pad; F Pad Polymer facility installation and startup; 2020 shutdown for A-Train process vessel inspections and upgrades; LM2500 turbine overhaul completion; Raven Pad design and civil work; S Pad facility future expansion; S Pad polymer engineering and procurement; diesel to slop oil tank conversion; and I Pad redevelopment. Repair activities will be routinely performed on pipelines, culverts, ice roads, and pads. Power generation and infrastructure at L Pad and polymer injection facilities are also planned on Moose Pad, F Pad, J Pad, and L Pad.

Hilcorp plans to expand the size of the Milne mine site up to 9 ha (22.37 ac). Approximately 6.3 ha (15.15 ac) will be mined for gravel. Overburden store will require about 1 ha (2.5 ac) and will be surrounded by a 1.3-ha (3.4-ac) buffer. Around 0.5 ha (1.32 ac) will be used to expand the Dalton Highway. The Ugnu Mine Site E, located approximately 8 km (5 mi) southeast of Oliktok Point and 3.2 km (2 mi) south of Simpson Lagoon, will also be expanded during the 2021–2026 ITR. Hilcorp's planned expansion for the new cell is approximately 259 m long by 274 m wide (850 ft long by 900 ft wide) or 7.1 ha (17.56 ac). This would produce an estimated 434,267 cubic m (568,000 cubic yd) of overburden including a 20 percent swell factor, and approximately 764,554 cubic m (1,000,000 cubic yd) of gravel. The footprint of the Phase I Material Site is expected to be 6.5 ha (16 ac). Overburden storage, a thermal barrier, and access road would require approximately 4.2 ha (10.3 ac). The final site layout will be dependent on gravel needs.

Marine vessels (specifically crew boats) are used to transport workers from West Dock to Milne Point if bridges are washed out. Additionally, vessels (tugs/barges) are used to transport fuel and cargo between Endicott, West Dock, Milne Point, and Northstar from July to September. While the frequency of these trips is dependent on operational needs in a given year, they are typically sparse. Hilcorp performs several emergency response and oil spill trainings throughout the year during both the open-water and ice-covered season. Smaller vessels (*i.e.,* zodiacs, Kiwi Noreens, bay-class boats) typically participate in these exercises; however, future classes may utilize other additional equipment or vessels (*e.g.,* the ARKTOS amphibious emergency escape vehicle) as needed. ARKTOS training will not be conducted during the summer, though Hilcorp notes that some variation in activities and equipment can be expected.

Nikaitchuq Unit

Eni U.S. Operating Co., Inc., is the 100 percent working interest owner and operator of the Nikaitchuq Unit. The Nikaitchuq Unit includes the following infrastructure: Oliktok Production Pad (OPP), Spy Island Drill site (SID), Nikaitchuq Operations Center (NOC), a subsea pipeline bundle, an onshore crude oil transmission pipeline (COTP), and an onshore pad that ties into the Kuparuk Pipeline (known as KPP). Currently, the SID includes 19 production wells, one exploration well on a Federal offshore lease, 14 injection wells, one Class-1 disposal well, and two shallow water wells. The OPP includes 12 production wells, 8 injection wells, 3 source water wells, 1 Class-1 disposal well, and 2 shallow water wells.

Road access in the Nikaichuq Unit for the OPP, NOC, and KPP are through connected gravel roads from the Dalton Highway year-round and maintained by Kuparuk. Equipment and cargo are brought in from Anchorage and Fairbanks after a stopover in Deadhorse. Traffic levels vary depending on ongoing activities but do not change significantly with time of year.

Crew and cargo are primarily transported using commercial flights to Deadhorse and then by vehicle. A helicopter may be used for transportation of personnel, the delivery and movement of supplies and equipment from Deadhorse when the Kuparuk Bridge is unavailable, or in the event of a medical emergency; however, these flights are infrequent. Eni utilizes off-road vehicles (Rolligons and other track vehicles) for both the summer and winter seasons for tundra travel; however, tundra travel is infrequent. Primarily, these activities would occur when access to the COTP between OPP and KPP is being inspected or under maintenance. Eni utilizes off-road vehicles during winter to conduct maintenance and inspections on COTP and to transport personnel, equipment, and supplies between the OPP and SID during periods where a sea ice road between the two locations is being constructed. Until the sea ice road is completed, vehicles travel by a single snow trail (approximately 6.8 km [4.25 mi]).

Two to three ice roads are constructed within the Nikaichuq Unit annually. These ice roads are typically around 6.8 km (4.25 mi) long and 18.3 m (60 ft) wide. Traffic occurs at all hours, consisting of a variety of light vehicles, such as pickup trucks and sport-utility vehicles (SUVs), high-capacity personnel transport vehicles (busses), ice road construction equipment (road graders, water tankers, snow blowers, front end loaders, and dump trucks), vacuum trucks, and tractor trailers. To build the sea ice road, Eni harvests ice chips from Lake K–304 after constructing a 0.3-km (0.2-mi) long, 9.1-m (30-ft) wide tundra ice road. In the past, a short tundra ice road was also constructed and used to access a lake to obtain water for maintenance of a sea ice road, and such an ice road may be used in the future.

Maintenance activities, such as gravel and gravel bag placement along the subsea pipeline, may occur as needed. Routine screeding is generally performed near barge landings at OPP and SID. Dredging is also possible in this area, although not likely. Hovercrafts are used to transport both cargo and personnel year round but generally occur daily between Oliktok Point and SID during October through January and May through July. Crew boats with passengers, tugs, and barges are used to transport cargo from Oliktok Point to the SID daily during open-water months (July through September) as needed. Eni also performs emergency response and oil spill trainings during both open-water and ice seasons.

Northstar Unit

The Northstar Unit is made up of a 15,360-ha (38,400-ac) reservoir, and Hilcorp Alaska, Inc., currently operates it. Northstar is an artificial island located approximately 6 km (4 mi) northwest of Point McIntyer and 10 km (6 mi) from Prudhoe Bay. The water depth surrounding the island is approximately 11.9 m (39 ft) deep. Thirty wells have been drilled to develop Northstar, of which 23 are still operable. A buried subsea pipeline (58 km [36 mi] long) connects the facilities from Northstar to the Prudhoe Bay oilfield. Access to the island is through helicopter, hovercraft, boat, Tucker, and vehicle (only during the winter ice road season). Routine activities include maintenance and bench/block repairs on culvert, road, and pipelines.

There are no established roads on Northstar Island. Loaders, cranes, and a telescopic material handler are used to move cargo and equipment. Hilcorp exclusively uses helicopters for all aircraft operations around the Northstar Unit, with an estimated 800 landings per year. Crew and cargo flights travel daily from May to January to Northstar Island from Deadhorse Airport. Sling-loading equipment and supplies may also occur from May through December. Pipeline inspections via aircraft are performed once weekly—generally with no landings. However, once per quarter, the helicopter lands to inspect the end of the pipeline where it enters the water (N70.404220, W148.692130).

Only winter tundra travel occurs at Northstar. Hilcorp typically builds several unimproved ice trails to Northstar, including a trail along the pipeline corridor from the valve pad near the Dew Line site to Northstar (9.5 km [5.93 mi]); a trail from West Dock to the pipeline shore crossing, grounded ice along the coastline (7.8 km [4.82 mi]); two unimproved ice road paths from the hovercraft tent at the dockhead; one trail under the West Dock Causeway (WDC) bridge to well pad DH3 (1.4 km [0.86 mi]); and a trail around West Dock to intersect the main ice road north of the STP (4.6 km [2.85 mi]). Hilcorp may also construct any number of shorter trails into undisturbed areas to avoid unstable/unsafe areas throughout the ice season. These detours may be constructed after March 1st due to safety considerations and may deviate approximately 23–46 m (75–150 ft) from the original road or trail.

Hilcorp typically constructs an approximately 11.7-km (7.3-mi) long ice road each year between Northstar and Prudhoe Bay (specifically West Dock) to allow for the transportation of personnel, equipment, materials, and supplies. This ice road generally allows standard vehicles (SUVs, pickup trucks, buses, other trucks) to transport crew and equipment to and from the island; however, Hilcorp may elect to construct an ice trail that supports only light-weight vehicles depending on operational needs and weather conditions.

During December or January before ice roads are built, Tucker tracked vehicles transport cargo and crew daily. During ice road construction, work will occur for 24 hours a day, 7 days a week, and is stopped only when unsafe conditions are presented (*e.g.,* high winds, extremely low temperatures). Ice road construction typically begins around January 1st when the ice is considered thick enough (minimum of 61 cm [24 in]) and is typically completed within 45 days of the start date.

Once the ice road is built, tractor-trailer trucks transport freight, chemicals for resupplies (occurs every 2 weeks using 10 truckloads), diesel, and other equipment. Additional personnel and smaller freight travel multiple times a day in light passenger traffic buses and pickup trucks. A grader and snow blower maintain the ice road daily, and in the event of cracks in the ice road, a loader may be used. Tucker tracked vehicles and hovercraft are used beginning mid-May as ice becomes unstable, then, as weather warms, boats and helicopters are used. Hilcorp uses hovercraft daily between West Dock and Northstar Island to transport crew and cargo (October through January and May through July) when broken-ice conditions are present. Crew boats have also been used to carry crew and cargo daily from West Dock to Northstar Island during open-water months (July to September) when hovercraft are not in use. Tugs and barges transport fuel and cargo from West Dock and Endicott to Northstar Island during the open-water season (July through September) and may be used once a year to transport workover rigs. There are typically 6–30 trips per year.

Northstar performs emergency response and oil spill trainings during both open-water and ice-covered seasons. Smaller vessels (*i.e.,* zodiacs, aluminum work boats, air boats, and bay-class boats) typically participate in these exercises. Future classes may utilize other additional equipment or vessels (*e.g.,* the ARKTOS amphibious emergency escape vehicle) as needed. However, the ARKTOS training will not be conducted during the summer.

Oooguruk Unit

The Oooguruk Unit was originally developed in 2008 and is operated by Eni, consisting of several developments and facilities including the Oooguruk Drill site (ODS), a 13-km (8.1-mi) long pipeline bundle, and the Oooguruk Tie-in Pad (OTP). The OTP is an onshore production facility that consists of tanks, flowlines, support infrastructure, and power generation facilities. The pipeline bundle consists of two oil pipelines, a 30.5-cm (12-in) inner diameter production flowline, and a 5.1-cm (2-in) inner diameter diesel/base oil flowline. The bundle sits about 61 m (200 ft) from the shoreline when onshore and runs about 3.8 km (2.4 mi) on vertical supports to the OTP. A 30.5-cm (12-in) product sales line enters a metering skid on the southeast side of the OTP. This metering skid represents the point where the custody of the oil is transferred to ConocoPhillips Alaska, Inc. Diesel fuels and base oil are stored at the OTP to resupply the ODS as needed.

The ODS is a manmade island located approximately 9.2 km (5.7 mi) offshore and measuring approximately 5.7 ha (14 ac) and is found approximately 12.9 km (8 mi) northwest of the OTP. The site includes living quarters with 150 beds, a helicopter landing site, various production and injection wells, and a grind and inject facility. A Nabors rig is also located on the pad and the rig is currently not in use. The ocean surrounding the island is about 3.05 m (10 ft) in depth and considered relatively shallow.

Oooguruk relies on interconnected gravel roads maintained by Kuparuk to gain access to the Dalton Highway throughout the year. Equipment and supplies travel from Anchorage and Fairbanks to the OTP through Deadhorse. The ODS is connected to the road system only when an ice road is developed and available from February to May.

Eni uses helicopters from May to January for cargo transport, which is limited to flights between the OTP and the ODS. Work personnel depart from the Nikaitchuq Unit's NOC pad; Eni estimates about 700 flights occur during the helicopter season for both crew and field personnel.

Eni occasionally utilizes off-road vehicles (*e.g.,* Rolligons and track vehicles) during the summer tundra months with activities limited to cleanup on ice roads or required maintenance of the pipeline bundle. During winter months, track vehicles transport personnel, equipment, and supplies between the OTP and ODS during the ice road construction period. The ice road is approximately 9.8-m (32-ft) wide, and traffic and activity are constant—most notably from light vehicles (pickup trucks, SUVs), high-capacity personnel transport (buses), ice road construction equipment (road graders, water tankers, snow blowers, front-end loaders, dump trucks), and well maintenance equipment (coil tubing units, wire-line units, hot oil trucks). Eni estimates over 3,500 roundtrips occur annually.

Eni will add 2,294 cubic m (3,000 cubic yd) of gravel to facilitate a hovercraft landing zone on island east and will also conduct additional gravel maintenance at the ''shoreline crossing'' of the pipeline or the area where the pipeline transitions from the above-ground section to the subsea pipeline. Maintenance in these areas is necessary to replace gravel lost to erosion from ocean wave action. Additionally, Eni performs gravel placement on the subsea pipeline to offset strudel scour—pending the results of annual surveys. Island ''armor'' (*i.e.,* gravel bags) requires maintenance throughout the year as well.

Eni utilizes some in-water vessel traffic to transport crew and cargo from Oliktok Point to the ODS during the open-water season (typically July to September). These trips occur daily (or less if hovercraft are used). Additionally, Eni uses tugs and barges to transport cargo from Oliktok Point to the ODS from July to September. These vessels make varying amounts of trips, from a few trips annually up to 50 trips depending on operational needs at the time.

Like the trainings performed at the Nikaitchuq Unit, Eni would also conduct emergency and oil spill response trainings throughout the ITR period at various times. Trainings will be conducted during both open-water and ice-covered seasons with training exercises occurring on both the land and the water depending on current ice conditions. Further information on these trainings can be found on the submitted AOGA Request for 2021–2026.

Point Thomson Unit

The Point Thomson Unit (PTU) is located approximately 32 km (20 mi) east of the Badami field and 96 km (60 mi) east of Deadhorse and is operated by ExxonMobil. The Unit includes the Point Thomson initial production system (IPS), Sourdough Wells, and legacy exploration sites (*i.e.,* PTU 1–4, Alaska C–1, West Staines State 2 and 18–9–23). The total Point Thomson IPS area is approximately 91 ha (225 ac), including 12.4 km (7.7 mi) of gravel roads, 35 km (22 mi) of pipelines, one gravel mine site, and three gravel pads (Central, West, and C–1).

The Point Thomson IPS facilities are interconnected by gravel roads but are not connected to other oilfields or developments. Equipment and supplies are brought in via air, barge, ice road, or tundra travel primarily from Deadhorse. Traffic on gravel roads within the PTU

occurs daily with roads from Central Pad to the airstrip experiencing the heaviest use. This consistent heavy use is not influenced by time of year. Vehicle types include light passenger trucks/vans, heavy tractor-trailer trucks, and heavy equipment usage on pads, particularly for snow removal and dust control.

Personnel and most cargo are transported to Point Thomson using aircraft departing from Deadhorse. During normal operations, an average of two to four passenger flights per week land at the Point Thomson Airport. Typically, there are 12 cargo flights per year (or one per month) that may land at Point Thomson, but frequency is reduced January to April when tundra is open. Aerial pipeline inspection surveys are conducted weekly, and environmental surveys and operations typically occur for one to two weeks each summer. The environmental surveys are generally performed at remediation sites such as West Staines State 2 and 18–9–23, areas of pipeline maintenance, and tundra travel routes.

Off-road vehicles (*e.g.,* Rolligons and track vehicles) are only used during the summer tundra months for emergency purposes such as accessing the pipeline. During winter months, off-road vehicles provide access to spill response conexes, deliver cargo supplies from Deadhorse, and maintain and inspect the PTU. Tundra travel includes a route south of the pipeline from Deadhorse to Point Thomson, a route along the pipeline right-of-way (ROW), spur roads as needed between the southern route and the pipeline ROW, and a route to spill conexes totaling approximately 146.5 km (91 mi). Travel along these routes can occur at any time of day.

Temporary ice roads and pads near the Point Thomson Facility are built to move heavy equipment to areas otherwise inaccessible for maintenance and construction activities. Ice road and ice pad construction typically begins in December or January. An ice road to Point Thomson is typically needed in the event that a drilling rig needs to be mobilized and extends east from the Endicott Road, connects to the Badami facilities, and continues east along the coast to Point Thomson.

Barging usually occurs from mid-July through September. In the event additional barging operations are needed, dredging and screeding activities may occur to allow barges to dock at Point Thomson. If dredging and screeding activities are necessary, the work would take place during the open-water season and would last less than a week. ExxonMobil also performs emergency response and oil spill trainings during the summer season. On occasion, spill response boats are used to transport operations and maintenance personnel to Badami for pipeline maintenance.

Expansion activities are expected to occur over 4 years and would consist of new facilities and new wells on the Central Pad to increase gas and condensate production. The Central Pad would require a minor expansion of only 2.8 ha (7 ac) to the southwest. Minor size increases on infield pipelines will also occur, but the facility footprint would not otherwise increase. To support this project, an annual ice road would be constructed, and summer barging activities would occur to transport a drilling rig, additional construction camps, field personnel, fuel, equipment, and other supplies or materials. Gravel would be sourced from an existing stockpile, supplemented by additional gravel volume that would be sourced offsite as necessary. Drilling of wells is expected to occur during the later years of construction, and new modular production facilities would be fabricated offsite and then delivered via sealift.

A small number of barge trips (<10 annually) are expected to deliver equipment, fuel, and supplies during the open-water season (mid-July through September) from Deadhorse and may occur at any time of day. Additional development activities are planned within PTU and are described in the section *Alaska Liquefied Natural Gas Project (Alaska LNG).*

Prudhoe Bay Unit

The Prudhoe Bay Unit (PBU) is the largest producing oilfield in North America and is operated by Hilcorp. The PBU includes satellite oilfields Aurora, Borealis, Midnight Sun, Polaris, and Orion. The total development area is approximately 1,778 ha (4,392 ac), including 450 km (280 mi) of gravel roads, 2,543 km (1,580 mi) of pipelines, 4 gravel mines, and over 113 gravel pads. Camp facilities such as the Prudhoe Bay Operations Center, Main Construction Camp, Base Operations Center, and Tarmac camp are also within the PBU.

PBU facilities are connected by gravel roads and can be accessed from the Dalton Highway year-round. Equipment and supplies are flown or transported over land from Anchorage and Fairbanks to Deadhorse before they are taken to the PBU over land. Traffic is constant across the PBU with arterial routes between processing facilities and camps experiencing the heaviest use while drill site access roads are traveled far less except during active drilling, maintenance, or other projects. Traffic is not influenced by the time of year. Vehicle types include light passenger trucks, heavy tractor-trailer trucks, heavy equipment, and very large drill rigs.

Personnel and cargo are transported to the PBU on regularly scheduled, commercial passenger flights through Deadhorse and then transported to camp assignments via bus. Pipeline surveys are flown every 7 days departing from CPAI's Alpine airstrip beginning the flight route at Pump Station 1 and covering a variety of routes in and around the Gathering Center 2, Flow Station 2, Central Compressor Pad, West Gas Injection, and East Sag facilities. Pipelines are also surveyed once per day from the road system using a truck-mounted forward-looking infrared camera system. Various environmental studies are also conducted using aircraft. Surveys include polar bear den detection and tundra rehabilitation and revegetation studies. Tundra environmental studies occur annually each summer in July and August with field personnel being transported to sites over an average of 4 days. Flights take off and return to Deadhorse airport, and field landings include seven tundra sites an average of 25.7 km (16 mi) from Deadhorse airport. Only four of the seven tundra landing sites are within 8 km (5 mi) of the Beaufort coast. Unmanned aerial systems (UAS) are used for subsidence, flare, stack, and facility inspections from June to September as well as annual flood surveillance in the spring. UAS depart and arrive at the same location and only fly over roads, pipeline ROWs, and/or within 1.6 km (1 mi) or line of sight of the pad.

Off-road vehicles (such as Rolligons and Tuckers) are used for maintenance and inspection activities during the summer to access pipelines and/or power poles that are not located adjacent to the gravel roads. These vehicles typically operate near the road (152 m [500 ft]) and may operate for 24 hours a day during summer months. During winter months, temporary ice roads and pads are built to move heavy equipment to areas that may be inaccessible. Winter tundra travel distances and cumulative ice road lengths average about 120.7 and 12.1 km (75 and 7.5 mi), respectively, and may occur at any hour of the day. An additional 0.8 ha (2 ac) of ice pads are constructed each winter.

West Dock is the primary marine gateway to the greater Prudhoe Bay area with users including Industry vessels, cargo ships, oil spill responders, subsistence users, and to a lesser degree,

public and commercial vessels. Routine annual maintenance dredging of the seafloor around the WDC occurs to maintain navigational access to DH2 and DH3 and to insure continued intake of seawater to the existing STP. Approximately 15,291 cubic m (20,000 cubic yd) of material is anticipated to be dredged over 56.6 ha (140 ac); however, up to 172,024 cubic m (225,000 cubic yd) of material is authorized to be removed in a single year. All dredged material is placed as fill on the WDC for beach replenishment and erosion protection. Some sediments are moved but remain on the seafloor as part of the screeding process. Much of the dredging work takes place during the open-water season between May and October and will be completed in less than 30 working days. Annual installation and floats, moorings, and buoys are installed at the beginning of the open-water season and are removed at the end of the open-water season. Up to three buoys may be installed to each side of the breach (up to six buoys total).

During the 2021–2022 winter tundra travel period, an additional 8-km (5-mi) ice road, 0.8-ha (2-ac) ice pad, up to 8-km (5-mi) pipeline, and pad space are expected to be constructed to support I-Pad expansion totaling 12.1 ha (30 ac) for the ice road and ice pad and 8.5 ha (21 ac) for the pad space, pipeline, and VSM footprints. Other pad expansions include approximately 0.8 ha (2 ac) per year 2021–2026 at DS3–DS0 and P-Pad.

Additionally, the construction of up to a 56.7-ha (140-ac) mine site is expected. Construction will occur on a need-based, phased approach over 40 years with no more than 24.3 ha (60 ac) of gravel developed by 2026. A 4.3-km (2.7-mi) long and 24.4-m (80-ft) wide gravel access road will also be built for a total impacted area of 10.5 ha (26 ac) over 1 year.

Trans-Alaska Pipeline System (TAPS)

TAPS is a 122-cm (48-in) diameter crude oil transportation pipeline system that extends 1,287 km (800 mi) from Pump Station 1 in Prudhoe Bay Oilfield to the Valdez Marine Terminal. The lands occupied by TAPS are State-owned, and the ROWs are leased through April 2034. Alyeska Pipeline Service Company operates the pipeline ROW. Approximately 37 km (23 mi) of pipeline are located within 40 km (25 mi) of the Beaufort Sea coastline. A 238-km (148-mi) natural gas line that extends from Pump Station 1 provides support for pipeline operations and facilities. The TAPS mainline pipe ROW includes a gravel work pad and drive lane that crosses the Dalton Highway approximately 29 km (18 mi) south of Pump Station 1.

Travel primarily occurs along established rounds, four pipeline access roads, or along the pipeline ROW work pad. Ground-based surveillance on the TAPS ROW occurs once per week throughout the year. Equipment and supplies are transported via commercial carriers on the Dalton Highway. In the summer, travel is primarily restricted to the gravel work pad and access roads. There are occasional crossings of unvegetated gravel bars to repair remote flood control structures on the Sagavanirktok River. Transport of small-volume gravel material from the active river floodplain to the TAPS work pad may occur. Vehicles used during the summer include typical highway vehicles, maintenance equipment, and off-road trucks for gravel material transport. In the winter, travel occurs in similar areas compared to summer in addition to maintenance activities, such as subsurface pipeline excavations. Short (<0.4 km, <0.25 mi) temporary ice roads and ice pads are built to move heavy equipment when necessary. Vehicles used during the winter include off-road tracked vehicles so that snow plowing on the ROW is not required. The amount of traffic is generally not influenced by the time of year.

The Deadhorse Airport is the primary hub used for personnel transport and airfreight to TAPS facilities in the northern pipeline area. Commercial and charter flights are used for personnel transport, and crew change-outs generally occur every 2 weeks. Other aviation activities include pipeline surveillance, oil spill exercise/training/response, and seasonal hydrology observations. Aerial surveillance of the pipeline occurs once each week during daylight hours throughout the year. Approximately 50 hours per year are flown within 40 km (25 mi) of the Beaufort Sea coastline.

No TAPS-related in-water activities occur in the Beaufort Sea. Instead, these activities will be limited to the Sagavanirktok River and its tributaries. In-water construction and dredging may take place occasionally, and they are generally associated with flood control structures and repairs to culverts, low water crossings, and eroded work pads. Gravel mining may also occur on dry unvegetated bars of the active floodplain or in established gravel pits. On river bars, up to a 0.9-m (3-ft) deep layer of alluvial gravel is removed when the river is low, and this layer is allowed to naturally replenish. Additional construction of flood structures may be needed to address changes in the hydrology of the Sagavanirktok River and its tributaries during the 2021–2026 period.

Western North Slope—Colville River and Greater Mooses Tooth Units

The Western North Slope (WNS) consists of the CPAI's Alpine and Alpine satellite operations in the Colville River Unit (CRU) and the Greater Mooses Tooth Unit (GMTU). The Alpine reservoir covers 50,264 ha (124,204 ac), but the total developed area is approximately 153 ha (378 ac), which contains 45 km (28 mi) of gravel roads, 51.5 km (32 mi) of pipelines, and 14 gravel pads. The CRU has a combined production pad/drill site and four additional drill sites. The GMTU contains one producing drill site and a second drill site undergoing construction. Roads and pads are generally constructed during winter.

There are no permanent roads connecting WNS to industrial hubs or other oilfields. Gravel roads connect four of the five CRU drill sites. An ice road is constructed each winter to connect to the fifth CRU drill site. Gravel roads also connect the GMTU drill sites to the CRU, and gravel roads connect the two GMTU drill sites to each other. Each drill site with gravel road access is visited at least twice during a 24-hour period, depending on the weather. Drill site traffic levels increase during active drilling, maintenance, or other projects. Vehicles that use the gravel roads include light passenger trucks, heavy tractor-trailer trucks, heavy equipment, and very large drill rigs. The amount of traffic is generally not influenced by the time of year, but there may be increased amounts of traffic during the exploration season.

In the winter, off-road vehicles are used to access equipment for maintenance and inspections. Temporary ice roads and ice pads are built to move heavy equipment for maintenance and construction activities. An ice road is constructed to connect WNS to the Kuparuk oilfield (KRU) to move supplies for the rest of the year. More than 1,500 truckloads of modules, pipeline, and equipment are moved to WNS over this ice road, which is approximately 105 km (65 mi) in length. As mentioned previously, an ice road is constructed each winter to connect one of the CRU drill sites to the other CRU facilities in order to facilitate maintenance, drilling, and operations at this drill site. WNS ice roads typically operate from mid-January until late-April.

The Alpine Airstrip is a private runway that is used to transport personnel and cargo. An average of 60

to 80 personnel flights to/from the Alpine Airstrip occur each week. Within the CRU, the Alpine Airport transports personnel and supplies to and from the CRU drill site that is only connected by an ice road during the winter. There are approximately 700 cargo flights into Alpine each year. Cargo flight activity varies throughout the year with October through December being the busiest months. Aerial visual surveillance of the Alpine crude pipeline is conducted weekly for sections of the pipeline that are not accessible either by road or during winter months. These aerial surveillance inspections generally occur one to two times each week, and they average between two and four total flight hours each week. CPAI also uses aircraft to conduct environmental studies, including polar den detection surveys in the winter and caribou and bird surveys in the summer. These environmental surveys cover approximately 1,287 linear km (800 linear mi) over the CRU each year. In the summer from mid-May to mid-September, CPAI uses helicopters to transport personnel and equipment within the CRU (approximately 2,000 flights) and GMTU (approximately 650 flights).

There are no offshore or coastal facilities in the CRU. However, there are multiple bridges in the CRU and GMTU that required pilings which were driven into stream/riverbeds during construction. In-water activities may occur during emergency and oil spill response training exercises. During the ice-covered periods, training exercises may involve using equipment to detect, contain, and recover oil on and under ice. During the open-water season, air boats, shallow-draft jet boats and possibly other vessels may be used in the Nigliq Channel, the Colville River Main Channel, and other channels and tributaries connected to the Colville River. Vessels may occasionally enter the nearshore Beaufort Sea to transit between channels and/or tributaries of the Colville River Delta.

In the 2021–2026 period, two 4-ha (10-ac) multiseason ice pads would be located in the WNS in order to support the Willow Development construction in the NPR–A. Possible expansion activities for this period may include small pad expansions or new pads (<6.1 ha (15 ac)) to accommodate additional drilling and development of small pads and gravel roads to accommodate additional facilities and operational needs. Two gravel mine sources in the Tiŋmiaqsiuġvik area have been permitted to supply gravel for the Willow Development. The new gravel source would be accessed seasonally by an ice road. Increases in the amount of traffic within WNS are expected from 2023 to 2026. The increase in traffic is due to the transport of freight, equipment, and support crew between the Willow Development, the Oliktok Dock, and the Kuparuk Airport. The planned Willow Development is projected to add several flights to/from the Alpine Airstrip from 2021 to 2026. It is estimated that the number of annual flights may increase by a range of 49 to 122 flights. There are plans to replace passenger flights connecting Alpine and Kuparuk oilfields in 2021 with direct flights to these oilfields. This change would reduce the number of connector flights between these oilfields from 18 flights to 5 flights each week.

Planned Activities at New Oil and Gas Facilities for 2021–2026

AOGA's Request includes several new oil and gas facilities being planned for leases obtained by Industry (see the section about *Lease Sales*) in which development and exploration activities would occur. The information discussed below was provided by AOGA and is the best available information at the time AOGA's Request was finalized.

Bear Tooth Unit (Willow)

Located 45.1 km (28 mi) from Alpine, the Willow Development is currently owned and operated by ConocoPhillips Alaska, Inc. Willow is found in the Bear Tooth Unit (BTU) located within the northeastern area of the NPR–A. Discovered in 2016 after the drilling of the Tiŋmiaq 2 and 6 wells, Willow is estimated to contain 400–750 million barrels of oil and has the potential to produce over 100,000 barrels of oil per day. The Willow Project would require the development of several different types of infrastructure, including gravel roads, airstrips, ice roads, and ice pads, that would benefit seismic surveys, drilling, operations, production, pile-driving, dredging, and construction.

ConocoPhillips plans to develop the hydrocarbon resources within the BTU during the 2021–2026 timeline under this ITR. The proposed development at Willow would consist of five drill sites along with associated infrastructure, including flowlines, a CPF, a personnel camp, an airstrip, a sales oil pipeline, and various roads across the area. Additionally, Willow would require the development of a new gravel mine site and would use sea lifts for large modules at Oliktok Dock requiring transportation over gravel and ice roads in the winter.

Access to the Willow Development project area to Alpine, Kuparuk, or Deadhorse would be available by ground transportation along ice roads. Additionally, access to the Alpine Unit would occur by gravel road. The Development Plan requires 61.5 km (38.2 mi) of gravel road and seven bridges to connect the five drill sites to the Greater Mooses Tooth 2 (GMT2). The Willow Development would also require approximately 59.7 km (37.1 mi) or 104 ha (257.2 ac) of gravel roads to the Willow Central Processing Facility (WCF), the WCF to the Greater Mooses Tooth 2 (GMT2), to water sources, and to airstrip access roads. The gravel needed for any gravel-based development would be mined from a newly developed gravel mine site and then placed for the appropriate infrastructure during winter for the first 3 to 4 years of the construction.

Gravel mining and placement would occur almost exclusively in the winter season. Prepacked snow and ice road construction will be developed to access the gravel mine site, the gravel road, and pad locations in December and January yearly from 2021 to 2024, and again in 2026. Ice roads would be available for use by February 1 annually. The Willow plan would require gravel for several facilities, including Bear Tooth 1 (BT1), Bear Tooth 2 (BT2), Bear Tooth 3 (BT3), Bear Tooth 4 (BT4), roads, WCF, Willow Operations Center (WOC), and the airstrip. Additionally, an all-season gravel road would be present from the GMT2 development and extend southwest towards the Willow Development area. This access road would end at BT3, located west from the WCF, WOC, and the airstrip. More gravel roads are planned to extend to the north, connecting BT1, BT2, and BT4. An infield road at BT3 would provide a water-source access road that would extend to the east to a freshwater reservoir access pad and water intake system developed by ConocoPhillips. Further east from the planned airstrip, an infield road is planned to extend north to BT1, continue north to BT2, and end at BT4. This road would intersect Judy (Iqalliqpik) Creek and Fish (Uvlutuuq) Creek at several points. Culvert locations would be identified and installed during the first construction season prior to breakup. Gravel pads would be developed before on-pad facilities are constructed. Gravel conditions and re-compaction would occur later in the year.

The Willow area is expected to have year-round aircraft operations and access from the Alpine Unit, Kuparuk Unit, Deadhorse, Anchorage, Fairbanks, and several other locations. Aircraft would primarily be used for support activities and transporting workers,

materials, equipment, and waste from the Willow Development to Fairbanks, Anchorage, Kuparuk, and Deadhorse. To support these operations, a 1,890-m (6,200-ft)-long gravel airstrip would be developed and is expected to be located near the WOC. Aircraft flight paths would be directed to the north of Nuiqsut. The construction for the airstrip is expected to begin during the 2021 winter season and completed by the summer of 2022. Before its completion, ConocoPhillips would utilize the airstrip at the Colville Delta 1 at the Alpine CPF. After completion of the airstrip, helicopters would be used to support various projects within the Willow Development starting in 2023. An estimated 82 helicopter flights would occur annually during 2023–2026 between April and August. After the development of planned gravel roads and during activities such as drilling and related operations, helicopters would be limited to support environmental monitoring and spill response support. ConocoPhillips estimates that 50 helicopter trips to and from Alpine would occur in 2021, and 25 helicopter trips would occur from Alpine in 2022.

ConocoPhillips plans to develop and utilize ice roads to support gravel infrastructure and pipeline construction to access lakes and gravel sources and use separate ice roads for construction and general traffic due to safety considerations regarding traffic frequency and equipment size. The ice road used to travel to the Willow Development is estimated to be shorter in length than previously built ice roads at Kuparuk and Alpine, and ConocoPhillips expects the ice road use season at Willow to be approximately 90 days, from January 25 to April 25. In the winter ice road season (February through April), material resupply and waste would be transported to Kuparuk and to the rest of the North Slope gravel road system via the annual Alpine Resupply Ice Road. Additionally, during drilling and operations, there would be seasonal ground access from Willow to Deadhorse and Kuparuk from the annually constructed Alpine Resupply Ice Road and then to the Alpine and GMT gravel roads.

Seasonal ice roads would be developed and used during construction at Willow's gravel mine, bridge crossings, horizontal directional drilling crossing, and other locations as needed. A 4-ha (10-ac) multiseason ice pad would be developed and used throughout construction. This ice pad would be constructed near the WOC from 2021 to 2022 and rotated on an annual basis.

Pipelines for the Willow Development would be installed during the winter season from ice roads. Following VSMs and horizontal support members (HSMs) assembly and installation; pipelines would be placed, welded, tested, and installed on pipe saddles on top of the HSMs. ConocoPhillips expects that the Colville River horizontal directional drilling pipeline crossing would be completed during the 2022 winter season. Pipeline installation would take approximately 1 to 3 years per pipeline, depending on several parameters such as pipeline length and location.

In 2024 at BT1, a drill rig would be mobilized, and drilling would begin prior to the WCF and drill site facilities being completed. ConocoPhillips estimates about 18 to 24 months of ''pre-drilling'' activities to occur, allowing the WCF to be commissioned immediately after its construction. Wells would be drilled consecutively from BT1, BT3, and BT2; however, the timing and order is based upon drill rig availability and economic decisionmaking. A second drilling rig may be utilized during the drilling phase of the Willow Development as well. ConocoPhillips estimates that drilling would occur year-round through 2030, with approximately 20 to 30 days of drilling per well.

Post-drilling phase and WCF startup, standard production and operation activities would take place. ConocoPhillips estimates that production would begin in the fourth quarter of 2025 with well maintenance operations occurring intermittently throughout the oilfield's lifespan.

ConocoPhillips plans to develop several bridges, installed via in-water pile-driving at Judy Creek, Fish Creek, Judy Creek Kayyaaq, Willow Creek 2, and Willow Creek 4. Pilings would be located above the ordinary high-water level and consist of sheet pile abutments done in sets of four, positioned approximately 12.2 to 21.3 m (40 to 70 ft) apart. Crossings over Willow Creek 4a and Willow Creek 8 would be constructed as single-span bridges, approximately 15.2 to 18.3 m (50 to 60 ft) apart using sheet pile abutments. Additionally, bridges would be constructed during the winter season from ice roads and pads. Screeding activities and marine traffic for the Willow project may also take place at the Oliktok Dock in the KRU.

Liberty Drilling and Production Island

The Liberty reservoir is located in Federal waters in Foggy Island Bay about 13 km (8 mi) east of the Endicott Satellite Drilling Island (SDI). Hilcorp plans to build a gravel island situated over the reservoir with a full on-island processing facility (similar to Northstar). The Liberty pipeline includes an offshore segment that would be buried in the seafloor for approximately 9.7 km (6 mi), and an onshore, VSM-mounted segment extending from the shoreline approximately 3.2 km (2 mi) to the Badami tie-in. Onshore infrastructure would include a gravel mine site, a 0.29-ha (0.71-ac) gravel pad at the Badami pipeline tie-in and a 6.1-ha (0.15-ac) gravel pad to allow for winter season ice road crossing. Environmental, archeological, and geotechnical work activities would take place to support the development and help inform decisionmaking. Development of the Liberty Island would include impact driving for conductor pipes/foundation pipes, vibratory drilling for conductor pipes, and vibratory and impact driving for sheet pile.

Road vehicles would use the Alaska Highway System to transport material and equipment from supply points in Fairbanks, Anchorage, or outside of Alaska to the supply hub of Deadhorse. Additionally, North Slope gravel roads would be used for transport from Deadhorse to the Endicott SDI. Existing gravel roads within the Endicott field between the MPI and the SDI would also be used to support the project.

During the winter seasons, workers would access the Liberty Island area from existing facilities via gravel roads and the ice road system. Construction vehicles would be staged at the construction sites, including the gravel mine. Access to the Liberty Drilling and Production Island (LDPI) by surface transportation is limited by periods when ice roads can be constructed and used. Additionally, surface transportation to the onshore pipeline can take place in winter on ice roads and can also occur in summer by approved tundra travel vehicles (*e.g.,* Rolligons). The highest volume of traffic would occur during gravel hauls to create the LDPI. Gravel hauling to the island would require approximately 14 trucks working for 76 days (BOEM 2018). An estimated 21,400 surface vehicle trips would occur per season during island construction.

In general, ice roads would be used in the winter seasons, marine vessels would be used in the summer seasons, helicopters would be used across both seasons, and hovercraft (if necessary) would be used during the shoulder season when ice roads and open water are not available. By spring breakup, all materials needed to support the ongoing construction would have been transported over the ice road system.

Additionally, personnel would access the island by helicopter (likely a Bell 212) or if necessary, via hovercraft. During the open-water season, continued use of helicopter and hovercraft would be utilized to transport personnel—however, crew boats may also be used.

Construction materials and supplies would be mobilized to the site by barge from West Dock or Endicott. Larger barges and tugs can over-winter in the Prudhoe Bay area and travel to the LDPI in the open-water season, generally being chartered on a seasonal basis or long-term contract. Vessels would include coastal and ocean-going barges and tugs to move large modules and equipment and smaller vessels to move personnel, supplies, tools, and smaller equipment. Barge traffic consisting of large ocean-going barges originating from Dutch Harbor is likely to consist of one-to-two vessels, approximately two-to-five times per year during construction, and only one trip every 5 years during operations. During the first 2 years following LDPI construction, hovercraft may make up to three trips per day from Endicott SDI to LDPI. After those 2 years, hovercraft may make up to two trips per day from Endicott SDI to LDPI (approximately 11.3 km [7 mi]).

Air operations are often limited by weather conditions and visibility. In general, air access would be used for movement of personnel and foodstuffs and for movement of supplies or equipment when necessary. Fixed-wing aircraft may be used on an as-needed basis for purposes of spill response (spill delineation) and aerial reconnaissance of anomalous conditions or unless otherwise required by regulatory authority. Helicopter use is planned for re-supply during the broken-ice seasons and access for maintenance and inspection of the onshore pipeline system. In the period between completion of hydro-testing and facilities startup, an estimated one-to-two helicopter flights per week are also expected for several weeks for personnel access and to transport equipment to the tie-in area. Typically, air traffic routing is as direct as possible from departure locations such as the SDI, West Dock, or Deadhorse to the LDPI, with routes and altitude adjusted to accommodate weather, other air traffic, and subsistence activities. Hilcorp would minimize potential disturbance to mammals from helicopter flights to support LDPI construction by limiting the flights to an established corridor from the LPDI to the mainland and except during landing and takeoff, and these flights would maintain a minimum altitude of 457 m (1,500 ft) above ground level (AGL) unless inclement weather requires deviation. Equipment located at the pipeline tie-in location and the pipeline shore landing would be accessed by helicopter or approved tundra travel vehicles to minimize impacts to the tundra.

Additionally, Hilcorp may use unmanned aerial surveys (UASs) during pile driving, pipe driving, and slope shaping and armament activities during the open-water season in Year 2 of construction and subsequently during decommissioning to monitor for whales or seals that may occur in incidental Level B harassment zones as described in the 2019 LOA issued by the National Marine Fisheries Service (NMFS 2020). Recent developments in the technical capacity and civilian use of UASs (defined as vehicles flying without a human pilot on board) have led to some investigations into potential use of these systems for monitoring and conducting aerial surveys of marine mammals (Koski et al. 2009; Hodgson et al. 2013). UASs, operating under autopilot and mounted with Global Positioning System (GPS) and imaging systems, have been used and evaluated in the Arctic (Koski et al. 2009) and have potential to replace traditional manned aerial surveys and provide an improved method for monitoring marine mammal populations. Hilcorp plans to seek a waiver, if necessary, from the Federal Aviation Administration (FAA) to operate the UAS above 122 m (400 ft) and beyond the line of sight of the pilot. Ground control for the UAS would be located at Liberty Island, Endicott, or another shore-based facility close to Liberty (NMFS 2020).

After construction, aircraft, land vehicle, and marine traffic may be at similar levels as those described for Northstar Island, although specific details beyond those presented here are not presently known.

Ice roads would be used for onshore and offshore access, installing the pipeline, hauling gravel used to construct the island, moving equipment on/off the island, and personnel and supply transit. Ice road construction can typically be initiated in mid- to late-December and can be maintained until mid-May, weather depending. Ice road #1 would extend approximately 11.3 km (7 mi) over shorefast sea ice from the Endicott SDI to the LDPI (the SDI to LDPI ice road). It would be approximately 37 m wide (120 ft) with a driving lane of approximately 12 m (40 ft) and cover approximately 64.8 ha (160 ac) of sea ice. Ice road #2 (approximately 11.3 km [7 mi]) would connect the LDPI to the proposed Kadleroshilik River gravel mine site and then would continue to the juncture with the Badami ice road (which is ice road #4). It would be approximately 15 m (50 ft) wide. Ice road #3 (approximately 9.6 km [6 mi], termed the ''Midpoint Access Road'') would intersect the SDI to LDPI ice road and the ice road between the LDPI and the mine site. It would be approximately 12 m (40 ft) wide. Ice road #4 (approximately 19.3 km [12 mi]), located completely onshore, would parallel the Badami pipeline and connect the mine site with the Endicott road.

All four ice roads would be constructed for the first 3 years to support pipeline installation and transportation from existing North Slope roads to the proposed gravel mine site, and from the mine site to the proposed LDPI location in the Beaufort Sea. After Year 3, only ice road #1 would be constructed to allow additional materials and equipment to be mobilized to support LDPI, pipeline, and facility construction activities as all island construction and pipeline installation should be complete by Year 3. In addition to the ice roads, three ice pads are proposed to support construction activities (Year 2 and Year 3). These would be used to support LDPI, pipeline (including pipe stringing and two stockpile/disposal areas), and facilities construction. A fourth staging area ice pad (approximately 107 by 213 m (350 by 700 ft) would be built on the sea ice on the west side of the LDPI during production well drilling operations.

Other on-ice activities occurring prior to March 1 may include spill training exercises, pipeline surveys, snow clearing, and work conducted by other snow vehicles such as a Pisten Bully, snow machine, or Rolligon. Prior to March 1, these activities would occur outside of the delineated ice road/trail and shoulder areas.

The LDPI would include a self-contained offshore drilling and production facility located on an artificial gravel island with a subsea pipeline to shore. The LDPI would be located approximately 8 km (5 mi) offshore in Foggy Island Bay and 11.7 km (7.3 mi) southeast of the existing SDI on the Endicott causeway. The LDPI would be constructed of reinforced gravel in 5.8 m (19 ft) of water and have a working surface of approximately 3.8 ha (9.3 ac). A steel sheet pile wall would surround the island to stabilize the placed gravel, and the island would include a slope protection bench, dock and ice road access, and a seawater intake area.

Hilcorp would begin constructing the LDPI during the winter immediately following construction of the ice road from the mine site to the island location. Sections of sea ice at the island's location would be cut using a ditchwitch and removed. A backhoe and support trucks using the ice road would move ice away. Once the ice is removed, gravel would be poured through the water column to the sea floor, building the island structure from the bottom up. A conical pile of gravel (hauled in from trucks from the mine site using the ice road) would form on the sea floor until it reaches the surface of the ice. Gravel hauling over the ice road to the LDPI construction site is estimated to continue for 50 to 70 days and conclude mid-April or earlier depending on road conditions. The construction would continue with a sequence of removing additional ice and pouring gravel until the surface size is achieved.

Following gravel placement, slope armoring and protection installation would occur. Using island-based equipment (*e.g.,* backhoe, bucket-dredge) and divers, Hilcorp would create a slope protection profile consisting of an 18.3-m (60-ft)-wide bench covered with a linked concrete mat that extends from a sheet pile wall surrounding the island to slightly above medium lower low water. The linked concrete mat requires a high-strength, yet highly permeable, woven polyester fabric under layer to contain the gravel island fill. The filter fabric panels would be overlapped and tied together side-by-side (requiring diving operations) to prevent the panels from separating and exposing the underlying gravel fill. Because the fabric is overlapped and tied together, no slope protection debris would enter the water column should it be damaged. Above the fabric under layer, a robust geo-grid would be placed as an abrasion guard to prevent damage to the fabric by the linked mat armor. The concrete mat system would continue at a 3:1 slope another 26.4 m (86.5 ft) into the water, terminating at a depth of 5.8 m (19 ft). In total, from the sheet pile wall, the bench and concrete mat would extend 44.7 m (146.5 ft). Island slope protection is required to ensure the integrity of the gravel island by protecting it from the erosive forces of waves, ice ride-up, and currents. A detailed inspection of the island slope protection system would be conducted annually during the open-water season to document changes in the condition of this system that have occurred since the previous year's inspection. Any damaged material would be removed. Above-water activities would consist of a visual inspection of the dock and sheet pile enclosure that would document the condition of the island bench and ramps. The below-water slopes would be inspected by divers or, if water clarity allows, remotely by underwater cameras contracted separately by Hilcorp. The results of the below-water inspection would be recorded for repair if needed. No vessels would be required. Multi-beam bathymetry and side-scan sonar imagery of the below-water slopes and adjacent sea bottom would be acquired using a bathymetry vessel. The sidescan sonar would operate at a frequency between 200 and 400 kHz. The single-beam echosounder would operate at a frequency of about 210 kHz.

Once the slope protection is in place, Hilcorp would install the sheet pile wall around the perimeter of the island using vibratory and, if necessary, impact hammers. Sheet pile driving is anticipated to be conducted between March and August, during approximately 4 months of the ice-covered season and, if necessary, approximately 15 days during the open-water season. Sheet pile driving methods and techniques are expected to be similar to the installation of sheet piles at Northstar during which all pile driving was completed during the ice-covered season. Therefore, Hilcorp anticipates most or all sheet pile would be installed during ice-covered conditions. Hilcorp anticipates driving up to 20 piles per day to a depth of 7.62 m (25 ft). A vibratory hammer would be used first, followed by an impact hammer to ''proof'' the pile. Hilcorp anticipates each pile needing 100 hammer strikes over approximately 2 minutes (100 strikes) of impact driving to obtain the final desired depth for each sheet pile. To finish installing up to 20 piles per day, the impact hammer would be used a maximum of 40 minutes per day with an anticipated duration of 20 minutes per day.

For vibratory driving, pile penetration speed can vary depending on ground conditions, but a minimum sheet pile penetration speed is 0.5 m (20 in) per minute to avoid damage to the pile or hammer (NASSPA 2005). For this project, the anticipated duration is based on a preferred penetration speed greater than 1 m (40 in) per minute, resulting in 7.5 minutes to drive each pile. Given the high storm surge and larger waves that are expected to arrive at the LDPI site from the west and northwest, the wall would be higher on the west side than on the east side. At the top of the sheet-pile wall, overhanging steel ''parapet'' would be installed to prevent wave passage over the wall.

Within the interior of the island, 16 steel conductor pipes would be driven to a depth of 49 m (160 ft) to provide the initial stable structural foundation for each oil well. They would be set in a well row in the middle of the island. Depending on the substrate, the conductor pipes would be driven by impact or vibratory methods or both. During the construction of the nearby Northstar Island (located in deeper water), it took 5 to 8.5 hours to drive one conductor pipe (Blackwell et al. 2004). For the Liberty LDPI, based on the 20 percent impact hammer usage factor (USDOT 2006.), it is expected that two cumulative hours of impact pipe driving (4,400 to 3,600 strikes) would occur over a 10.5 non-consecutive hour day. Conductor pipe driving is anticipated to be conducted between March and August and take 16 days total, installing one pipe per day. In addition, approximately 700 to 1,000 foundation piles may also be installed within the interior of the island should engineering determine they are necessary for island support.

The LDPI layout includes areas for staging, drilling, production, utilities, a camp, a relief well, a helicopter landing pad, and two docks to accommodate barges, a hovercraft, and small crew boats. It would also have ramps for ice road and amphibious vehicle access. An STP would also be located at the facility to treat seawater and then commingle it with produced water to be injected into the Liberty Reservoir to maintain reservoir pressure. Treated seawater would be used to create potable water and utility water for the facility. A membrane bioreactor would treat sanitary wastewater, and remaining sewage solids would be incinerated on the island or stored in enclosed tanks prior to shipment to Deadhorse for treatment.

All modules, buildings, and material for onsite construction would be trucked to the North Slope via the Dalton Highway and staged at West Dock, Endicott SDI, or in Deadhorse. Another option is to use ocean-going barges from Dutch Harbor to transport materials or modules to the island during the open-water season.

Depending on the season, equipment and material would be transported via coastal barges in open water, or ice roads from SDI in the winter. The first modules would be delivered in the third quarter of Year 2 to support the installation of living, drilling, and production facilities. Remaining process modules would be delivered to

correspond with first oil and the ramp-up in drilling capacity.

Onsite facility installation would commence in August of Year 2 and be completed by the end of Year 4 (May) to accommodate the overall construction and production ramp-up schedule. Some facilities that are required early would be barged in the third quarter of Year 2 and would be installed and operational by the end of the fourth quarter of Year 2. Other modules would be delivered as soon as the ice road from SDI is in place. The drilling unit and associated equipment would be transferred by barge through Dutch Harbor or from West Dock to the LDPI during the open-water season in Year 2 using a seagoing barge and ocean class tug. The seagoing barge is ~30.5 m (100 ft) wide and ~122 m (400 ft) long, and the tug is ~30.5 m (100 ft) long. Although the exact vessels to be used are unknown, Crowley lists Ocean class tugs at <1,600 gross registered tonnage. The weight of the seagoing barge is not known at this time.

Hilcorp would install a pipe-in-pipe subsea pipeline consisting of a 30.5-cm (12-in)-diameter inner pipe and a 40.6-cm (16-in)-diameter outer pipe to transport oil from the LDPI to the existing Badami pipeline. Pipeline construction is planned for the winter after the island is constructed. A schematic of the pipeline can be found in Figure 2–3 of BOEM's Final EIS available at *https://www.boem.gov/Hilcorp-Liberty/*. The pipeline would extend from the LDPI, across Foggy Island Bay, and terminate onshore at the existing Badami Pipeline tie-in location. For the marine segment, construction would progress from shallower water to deeper water with multiple construction spreads.

To install the pipeline, a trench would be excavated using ice-road-based long-reach excavators with pontoon tracks. The pipeline bundle would be lowered into the trench using side booms to control its vertical and horizontal position, and the trench would be backfilled by excavators using excavated trench spoils and select backfill. Hilcorp intends to place all material back in the trench slot. All work would be done from ice roads using conventional excavation and dirt-moving construction equipment. The target trench depth is 2.7 to 3.4 m (9 to 11 ft) with a proposed maximum depth of cover of approximately 2.1 m (7 ft). The pipeline would be approximately 9 km (5.6 mi) long.

At the pipeline landfall (where the pipeline transitions from onshore to offshore), Hilcorp would construct an approximately 0.6-ha (1.4-ac) trench to protect against coastal erosion and ice ride-up associated with onshore sea ice movement and to accommodate the installation of thermosiphons (heat pipes that circulate fluid based on natural convection to maintain or cool ambient ground temperature) along the pipeline. The onshore pipeline would cross the tundra for almost 2.4 km (1.5 mi) until it intersects the existing Badami pipeline system. The single wall 30.5-cm (12-in) pipeline would rest on 150 to 170 VSMs, spaced approximately 15 m (50 ft) apart to provide the pipeline a minimum 2.1-m (7-ft) clearance above the tundra. Hydro-testing (pressure testing using sea water) of the entire pipeline would be required to complete pipeline commissioning.

The final drill rig has yet to be chosen but has been narrowed to 2 options and would accommodate drilling of 16 wells. The first option is the use of an existing platform-style drilling unit that Hilcorp owns and operates in the Cook Inlet. Designated as Rig 428, the rig has been used recently and is well suited in terms of depth and horsepower rating to drill the wells at Liberty. A second option that is being investigated is a new build drilling unit that would be built not only to drill Liberty development wells but would be more portable and more adaptable to other applications on the North Slope. Regardless of drill rig type, the well row arrangement on the island is designed to accommodate up to 16 wells. While Hilcorp is proposing a 16-well design, only 10 wells would be drilled. The six additional well slots would be available as backups or for potential in-fill drilling if needed during the project life.

Drilling would be done using a conventional rotary drilling rig, initially powered by diesel, and eventually converted to fuel gas produced from the third well. Gas from the third well would also replace diesel fuel for the grind-and-inject facility and production facilities. A location on the LDPI is designated for drilling a relief well, if needed.

Process facilities on the island would separate crude oil from produced water and gas. Gas and water would be injected into the reservoir to provide pressure support and increase recovery from the field. A single-phase subsea pipe-in-pipe pipeline would transport sales-quality crude from the LDPI to shore, where an aboveground pipeline would transport crude to the existing Badami pipeline. From there, crude would be transported to the Endicott Sales Oil Pipeline, which ties into Pump Station 1 of the TAPS for eventual delivery to a refinery.

North Slope Gas Development

The AOGA Request discusses two projects currently submitted for approval and permitting that would transport natural gas from the North Slope via pipeline. Only a small fraction of this project would fall within the 40-km (25-mi) inland jurisdiction area of this ITR. The two projects are the Alaska Liquified Natural Gas Project (Alaska LNG) and the Alaska Stand Alone Pipeline (ASAP). Both of these projects are discussed below and their effects analyzed in this ITR, but only one project could be constructed during the 2021–2026 period.

Alaska Liquefied Natural Gas Project (Alaska LNG)

The Alaska LNG project has been proposed by the Alaska Gasline Development Corporation (AGDC) to serve as a single integrated project with several facilities designed to liquefy natural gas. The fields of interest are the Point Thomson Unit (PTU) and PBU production fields. The Alaska LNG project would consist of a Gas Treatment Plant (GTP); a Point Thomson Transmission Line (PTTL) to connect the GTP to the PTU gas production facility; a Prudhoe Bay Transmission Line (PBTL) to connect the GTP to the PBU gas production facility; a liquefaction facility in southcentral Alaska; and a 1,297-km (807-mi)-long, 107-cm (42-in)-diameter pipeline (called the Mainline) that would connect the GTP to the liquefaction facility. Only the GTP, PTTL, PBTL, a portion of the Mainline, and related ancillary facilities would be located within the geographic scope of AOGA's Request. Related components would require the construction of ice roads, ice pads, gravel roads, gravel pads, camps, laydown areas, and infrastructure to support barge and module offloading.

Barges would be used to transport GTP modules at West Dock at Prudhoe Bay several times annually, with GTP modules being offloaded and transported by land to the proposed GTP facility in the PBU. However, deliveries would require deep draft tug and barges to a newly constructed berthing site at the northeast end of West Dock. Additionally, some barges would continue to deliver small modules and supplies to Point Thomson. Related activities include screeding, shallow draft tug use, sea ice cutting, gravel placement, sea ice road and sea ice pad development, vibratory and impact pile driving, and the use of an offshore barge staging area.

A temporary bridge (developed from ballasted barges) would be developed to assist in module transportation. Barges would be ballasted when the area is ice-free and then removed and overwintered at West Dock before the sea freezes over. A staging area would then be used to prepare modules for transportation, maintenance, and gravel road development. Installation of ramps and fortification would utilize vibratory and impact pile driving. Seabed preparations and level surface preparations (*i.e.,* ice cutting, ice road development, gravel placement, screeding) would take place as needed. Breasting/mooring dolphins would be installed at the breach point via pile driving to anchor and stabilize the ballasted barges.

A gravel pad would be developed to assist construction of the GTP, adjacent camps, and other relevant facilities where work crews utilize heavy equipment and machinery to assemble, install, and connect the GTP modules. To assist, gravel mining would use digging and blasting, and gravel would be placed to create pads and develop or improve ice and gravel roads.

Several types of development and construction would be required at different stages of the project. The construction of the Mainline would require the use of ice pads, ice roads, gravel roads, chain trenchers, crane booms, backhoes, and other heavy equipment. The installation of the PTTL and PBTL would require ice roads, ice pads, gravel roads, crane booms, mobile drills or augers, lifts, and other heavy equipment. After installation, crews would work on land and streambank restoration, revegetation, hydrostatic testing, pipeline security, and monitoring efforts. The development of the ancillary facility would require the construction of ice roads, ice pads, as well as minimal transportation and gravel placement.

Alaska Stand Alone Pipeline (ASAP)

The ASAP is the alternative project option that AGDC could utilize, allowing North Slope natural gas to be supplied to Alaskan communities. ASAP would require several components, including a Gas Conditioning Facility (GCF) at Prudhoe Bay; a 1,180-km (733-mi)-long, 0.9-m (36-in)-diameter pipeline that would connect the GCF to a tie-in found in southcentral Alaska (called the Mainline); and a 48-km (30-m), 0.3-m (12-in)-diameter lateral pipeline connecting the Mainline pipeline to Fairbanks (referred to as the Fairbanks Lateral). Similar to the Alaska LNG pipeline, only parts of this project would fall within the geographic scope of this ITR. These relevant project components are the GCF, a portion of the ASAP Mainline, and related ancillary facilities. Construction would include the installation of supporting facilities and infrastructure, ice road and pad development, gravel road and pad development, camp establishment, laydown area establishment, and additional infrastructure to support barge and module offloading.

Barges would be used to transport the GCF modules to West Dock in Prudhoe Bay and would be offloaded and transported by ground to the proposed facility site within the PBU. Module and supply deliveries would utilize deep draft tugs and barges to access an existing berthing location on the northeast side of West Dock called DH3. Maintenance on DH3 would be required to accommodate the delivery of larger loads and would consist of infrastructure reinforcement and elevation increases on one of the berths. In the winter, a navigational channel and turn basin would be dredged to a depth of 2.7 m (9 ft). Dredged material would be disposed of on ground-fast ice found in 0.6–1.2 m (2–4 ft) deep water in Prudhoe Bay. An offshore staging area would be developed approximately 4.8–8 km (3–5 mi) from West Dock to allow deep draft tugs and barges to stage before further transportation to DH3 and subsequent offload by shallow draft tugs. Other activities include seabed screeding, gravel placement, development of a sea ice road and pads, and pile driving (vibratory and impact) to install infrastructure at West Dock.

A temporary bridge (composed of ballasted barges and associated infrastructure) paralleling an existing weight-limited bridge would be developed to assist in transporting large modules off West Dock. Barges would be ballasted when the area is ice-free and then removed and overwintered at West Dock before the sea freezes over. A staging area would be used to prepare modules for transportation, maintenance, and gravel road development. The bridge construction would require ramp installation, fortification through impact, and vibratory pile driving. Support activities (development of ice roads and pads, gravel roads and pads, ice cutting, seabed screeding) would also take place. Breasting/mooring dolphins would be installed at the breach point via pile driving to anchor and stabilize the ballasted barges.

A gravel facility pad would be formed to assist in the construction of the GCF. Access roads would then be developed to allow crews and heavy equipment to install and connect various GCF modules. Gravel would be obtained through digging, blasting, transportation, gravel pad placement, and improvements to other ice and gravel roads.

The construction of the Mainline pipeline would require the construction of ice pads, ice roads, and gravel roads along with the use of chain trenchers, crane booms, backhoes, and other heavy equipment. Block valves would be installed above ground along the length of the Mainline. After installation, crews would work on land and streambank restoration, revegetation, hydrostatic testing, pipeline security, and monitoring efforts.

Pikka Unit

The Pikka Development (formally known as the Nanshuk Project) is located approximately 83.7 km (52 mi) west of Deadhorse and 11.3 km (7 mi) northeast of Nuiqsut. Oil Search Alaska operates leases held jointly between the State of Alaska and ASRC located southeast of the East Channel of the Colville River. Pikka is located further southwest from the existing Oooguruk Development Project, west of the existing KRU, and east of Alpine and Alpine's Satellite Development Projects. Most of the infrastructure is located over 8 km (5 mi) from the coast within the Pikka Unit; however, Oil Search Alaska expects some smaller projects and activities to occur outside the unit to the south, east, and at Oliktok Point.

The Pikka Project would include a total of 3 drill-sites for approximately 150 (production, injectors, underground injection) wells, as well as the Nanshuk Processing Facility (NPF), the Nanushuk Operations Pad, a tie-in pad (TIP), various camps, warehouses, facilities on pads, infield pipelines, pipelines for import and export activities, various roads (ice, infield, access), a boat ramp, and a portable water system. Additionally, there are plans to expand the Oliktok Dock and to install an STP adjacent to the already existing infrastructure. A make-up water pipeline would also be installed from the STP to the TIP. Oil Search Alaska also plans to perform minor upgrades and maintenance, as necessary, to the existing road systems to facilitate transportation of sealift modules from Oliktok Point to the Pikka Unit.

Oil Search Alaska plans to develop a pad to station the NPF and all relevant equipment and operations (*i.e.,* phase separation, heating and cooling, pumping, gas treatment and compression for gas injections, water treatment for injection). All oil procured, processed, and designated for

sale would travel from the NPF to the TIP near Kuparuk's CPF 2 via the Pikka Project pipeline that would tie in to the Kuparuk Sales Pipeline and would then be transported to TAPS. Construction of the pad would allow for additional space that could be repurposed for drilling or for operational use during the development of the Pikka Project. This pad would contain other facilities required for project operation and development, including: Metering and pigging facilities; power generation facilities; a truck fill station; construction material staging areas; equipment staging areas; a tank farm (contains diesel, refined fuel, crude oil, injection water, production chemicals, glycol, and methanol storage tanks); and a central control room. All major components required for the development of the NPF would be constructed off-site and brought in via truck or barge during the summer season. Barges would deliver and offload necessary modules at Oliktok Dock, which would travel to the NPF site during summer months. Seabed screeding would occur at Oliktok Point to maintain water depth for necessary barges.

Pikka would use gravel roads to the Unit, which would allow year-round access from the Dalton Highway. All gravel needed for project activities (approximately 112 ha [276 ac]) would be sourced from several existing gravel mine sites. A majority of gravel acquisition and laying would occur during the winter season and then be compacted in the summer. All equipment and supplies necessary would be brought in on existing roads from Anchorage or Fairbanks to Deadhorse. Supplies and equipment would then be forwarded to the Pikka Unit; no aerial transportation for supplies is expected. Regular traffic is expected once construction of the roads is completed; Oil Search Alaska expects arterial routes between the processing facilities and camps to experience the heaviest use of traffic. Drill-site access roads are expected to experience the least amount of traffic; however, drill-site traffic is expected to increase temporarily during periods of active drilling, maintenance, or other relevant aspects of the project. Standard vehicles would include light passenger trucks, heavy tractor-trailer trucks, heavy equipment, and oil rigs.

Several types of aircraft operations are expected at the Pikka Unit throughout the 2021–2026 period. Personnel would be transported to Pikka via commercial flights from Deadhorse Airport and by ground-based vehicle transport. Currently, there is no plan to develop an airstrip at Pikka. Personnel flights are expected to be infrequent to and from the Pikka Unit; however, Oil Search Alaska expects that some transport directly to the Unit may be required. Several environmental studies performed via aircraft are expected during the ITR period. Some of these include AIR surveys, cultural resources, stick-picking, and hydrology studies. AIR surveys in support of the Pikka Unit would occur annually to locate polar bear dens.

Summer travel would utilize vehicles such as Rolligons and Tuckers to assess pipelines not found adjacent to the gravel roads. During 24-hour sunlight periods, these vehicles would operate across all hours. Stick-picking and thermistor retrieval would also occur in the summer. In the winter, ice roads would be constructed across the Unit. These ice roads would be developed to haul gravel from existing mine sites to haul gravel for road and pad construction. Ice roads would also be constructed to support the installation of VSM and pipelines. Off-road winter vehicles would be used when the tundra is frozen and covered with snow to provide maintenance and access for inspection. Temporary ice roads and ice pads would be built to allow for the movement and staging of heavy equipment, maintenance, and construction. Oil Search Alaska would perform regular winter travel to support operations across the Pikka Unit.

Oil Search Alaska plans to install a bridge over the Kachemach River (more than 8 km [5 mi] from the coast) and install the STP at Oliktok Point. Both projects would require in-water pile driving, which is expected to take place during the winter seasons. In-water pile driving (in the winter), placement of gravel fill (open-water period), and installation of the STP barge outfall structure (open-water period) would take place at Oliktok Point. Dredging and screeding activities would prepare the site for STP and module delivery via barge. Annual maintenance screeding and dredging (expected twice during the Request period) may be needed to maintain the site. Dredging spoils would be transported away, and all work would occur during the open-water season between May and October. Screeding activities are expected to take place annually over the course of a 2-week period, depending on stability and safety needs.

Gas Hydrate Exploration and Research

The U.S. Geological Survey (USGS) estimates that the North Slope contains over 54 trillion cubic feet of recoverable gas assets (Collette *et al.* 2019). Over the last 5 years, Industry has demonstrated a growing interest in the potential to explore and extract these reserves. Federal funds from the Department of Energy have been provided in the past to support programs on domestic gas hydrate exploration, research, and development. Furthermore, the State of Alaska provides support for gas hydrate research and development through the development of the Eileen hydrate trend deferred area near Milne Point, with specific leases being offered for gas hydrate research and exploration.

As of 2021, a few gas hydrate exploration and test wells have been drilled within the Beaufort Sea region. Due to the support the gas hydrate industry has received, AOGA expects continued interest to grow over the years. As such, AOGA expects that a relatively low but increasing amount of gas hydrate exploration and research is expected throughout the 2021–2026 period.

Environmental Studies

Per AOGA's Request, Industry would continue to engage in various environmental studies throughout the life of the ITR. Such activities include: Geological and geotechnical surveys (*i.e.,* seismic surveys); surveys on geomorphology (soils, ice content, permafrost), archeology and cultural resources; vegetation mapping; analysis of fish, avian, and mammal species and their habitats; acoustic monitoring; hydrology studies; and various other freshwater, marine, and terrestrial studies of the coastal and offshore regions within the Arctic. These studies typically include various stakeholders, including consultants and consulting companies; other industries; government; academia (university-level); nonprofits and nongovernmental organizations; and local community parties. However, AOGA's 2021–2026 ITR Request seeks coverage only for environmental studies directly related to Industry activities (*e.g.,* monitoring studies in response to regulatory requirements). No third-party studies will be covered except by those mentioned in this ITR and the AOGA Request.

During the 2021–2026 lifespan of the ITR, Industry would continue studies that are conducted for general monitoring purposes for regulatory and/or permit requirements and for expected or planned exploration and development activities within the Beaufort Sea region. Environmental studies are anticipated to occur during the summer season as to avoid overlap with any denning polar bears. Activities

may utilize vessels, fixed-wing aircrafts, or helicopters to access research sites.

Mitigation Measures

AOGA has included in their Request a number of measures to mitigate the effects of the proposed activities on Pacific walruses and polar bears. Many of these measures have been historically used by oil and gas entities throughout the North Slope of Alaska and have been developed as a part of past coordination with the Service. Measures include: Development and adherence to polar bear and Pacific walrus interaction plans; design of facilities to reduce the possibility of polar bears reaching attractants; avoidance of operating equipment near potential den locations; flying aircraft at a minimum altitude and distance from polar bears and hauled out Pacific walruses; employing trained protected species observers; and reporting all polar bear or Pacific walrus encounters to the Service. Additional descriptions of these measures can be found in the AOGA Request for an ITR at: *www.regulations.gov* in Docket No. FWS–R7–ES–2021–0037.

Maternal Polar Bear Den Survey Flights

Per AOGA's Request, Industry will also conduct aerial infrared (AIR) surveys to locate maternal polar bear dens in order to mitigate potential impacts to mothers and cubs during the lifetime of this ITR. AIR surveys are used to detect body heat emitted by polar bears, which, in turn, is used to determine potential denning polar bears. AIR surveys are performed in winter months (December or January) before winter activities commence. AIR imagery is analyzed in real-time during the flight and then reviewed post-flight with the Service to identify any suspected maternal den locations, ensure appropriate coverage, and check the quality of the images and recordings. Some sites may need to be resurveyed if a suspected hotspot (heat signature detectable in a snowdrift) is observed. These followup surveys of hotspots are conducted in varying weather conditions or using an electro-optical camera during daylight hours. On-the-ground reconnaissance or the use of scent-training dogs may also be used to recheck the suspected den.

Surveys utilize AIR cameras on fixed-wing aircrafts with flights typically flown between 245–457 meters (800–1,500 feet) above ground level at a speed of <185 km/h (<115 mph). Surveys typically occur twice a day (weather permitting) during periods of darkness (civil twilight) across the North Slope for less than 4.5 hours per survey. Surveys are highly dependent on the weather as it can affect the image quality of the AIR video and the safety of the participants. These surveys do not follow a typical transect configuration; instead they are concentrated on areas that would be suitable for polar bear denning activity such as drainages, banks, bluffs, or other areas of topographic relief around sites where Industry has winter activities, tundra travel, or ice road construction planned or anticipated. As part of AOGA's Request and as described in the mitigation measures included in this ITR, all denning habitat within 1 mile of the ice-season industrial footprint will be surveyed twice each year. In years where seismic surveys are proposed, all denning habitat within the boundaries of the seismic surveys will be surveyed three times, and a third survey will be conducted on denning habitat along the pipeline between Badami and the road to Endicott Island. Greater detail on the timing of these surveys can be found in *Methods for Modeling the Effects of Den Disturbance.*

A suspected heat signature observed in a potential den found via AIR is classified into three categories: A hotspot, a revisit, or a putative den. The following designations are discussed below.

A ''hotspot'' is a warm spot found on the AIR camera indicative of a polar bear den through the examination of the size and shape near the middle of the snow drift. Signs of wildlife presence (*e.g.,* digging, tracks) may be present and visible. Suspected dens that are open (*i.e.,* not drifted closed by the snow) are considered hotspots because polar bears may dig multiple test evacuation sites when searching for an appropriate place to den and unused dens will cool down and be excluded from consideration. Hotspots are reexamined and either eliminated or upgraded to a ''putative den'' designation. Industry representatives, in coordination and compliance with the Service, may utilize other methods outside of AIR to gather additional information on a suspected hotspot.

A ''revisit'' is a designation for a warm spot in a snowdrift but lacking signs of a polar bear den (*e.g.,* tailings pile, signs of animal activity, appropriate shape or size). These categorizations are often revisited during a subsequent survey, upgraded to a ''hotspot'' designation, or eliminated from further consideration pending the evidence presented.

A ''putative den'' is a hotspot that has maintained a distinct heat signature longer than a day and is found within the appropriate habitat. The area may show evidence of an animal's presence that may not definitively be attributed to a non-polar bear species or cause (*e.g.,* a fox or other animal digging). The final determination is often unknown as these sites are not investigated further, monitored, or revisited in the spring.

When and if a putative den is found near planned or existing infrastructure or activities, the Industry representatives will immediately cease operations within 1 mile of the location and coordinate with the Service to mitigate any potential disturbances while further information is obtained.

Evaluation of the Nature and Level of Activities

The annual level of activity at existing production facilities in the Request will be similar to that which occurred under the previous regulations. The increase in the area of the industrial footprint with the addition of new facilities, such as drill pads, pipelines, and support facilities, is at a rate consistent with prior 5-year regulatory periods. Additional onshore and offshore facilities are projected within the timeframe of these regulations and will add to the total permanent activities in the area. This rate of expansion is similar to prior production schedules.

Description of Marine Mammals in the Specified Geographic Region

Polar Bear

Polar bears are distributed throughout the ice-covered seas and adjacent coasts of the Arctic region. The current total polar bear population is estimated at approximately 26,000 individuals (95 percent Confidence Interval (CI) = 22,000–31,000, Wiig *et al.* 2015; Regehr *et al.* 2016) and comprises 19 stocks ranging across 5 countries and 4 ecoregions that reflect the polar bear dependency on sea-ice dynamics and seasonality (Amstrup et al. 2008). Two stocks occur in the United States (Alaska) with ranges that extend to adjacent countries: Canada (the Southern Beaufort Sea (SBS) stock) and the Russia Federation (the Chukchi/Bering Seas stock). The discussion below is focused on the Southern Beaufort Sea stock of polar bears, as the proposed activities in this ITR would overlap only their distribution.

Polar bears typically occur at low, uneven densities throughout their circumpolar range (DeMaster and Stirling 1981, Amstrup *et al.* 2011, Hamilton and Derocher 2019) in areas where the sea is ice-covered for all or part of the year. They are typically most abundant on sea-ice, near polynyas (*i.e.,* areas of persistent open water) and

fractures in the ice, and over relatively shallow continental shelf waters with high marine productivity (Durner et al. 2004). This sea-ice habitat favors foraging for their primary prey, ringed seals *(Pusa hispida),* and other species such as bearded seals *(Erignathus barbatus)* (Thiemann *et al.* 2008, Cherry *et al.* 2011, Stirling and Derocher 2012). Although over most of their range polar bears prefer to remain on the sea-ice year-round, an increasing proportion of stocks are spending prolonged periods of time onshore (Rode et al. 2015, Atwood et al. 2016b). While time spent on land occurs primarily in late summer and autumn (Rode et al. 2015, Atwood et al. 2016b), they may be found throughout the year in the onshore and nearshore environments. Polar bear distribution in coastal habitats is often influenced by the movement of seasonal sea ice (Atwood et al. 2016b, Wilson et al. 2017) and its direct and indirect effects on foraging success and, in the case of pregnant females, also dependent on availability of suitable denning habitat (Durner et al. 2006, Rode et al. 2015, Atwood et al. 2016b).

In Alaska during the late summer/fall period (July through November), polar bears from the Southern Beaufort Sea stock often occur along the coast and barrier islands, which serve as travel corridors, resting areas, and to some degree, foraging areas. Based on Industry observations and coastal survey data acquired by the Service (Wilson *et al.* 2017), encounter rates between humans and polar bears are higher during the fall (July to November) than in any other season, and an average of 140 polar bears may occur on shore during any week during the period July through November between Utqiagvik and the Alaska—Canada border (Wilson *et al.* 2017). The length of time bears spend in these coastal habitats has been linked to sea ice dynamics (Rode *et al.* 2015, Atwood et al. 2016b). The remains of subsistence-harvested bowhead whales at Cross and Barter islands provide a readily available food attractant in these areas (Schliebe *et al.* 2006). However, the contribution of bowhead carcasses to the diet of SBS polar bears varies annually (*e.g.,* estimated as 11–26 percent and 0–14 percent in 2003 and 2004, respectively) and by sex, likely depending on carcass and seal availability as well as ice conditions (Bentzen et al. 2007).

Polar bears have no natural predators (though cannibalism is known to occur; Stirling et al. 1993, Amstrup et al. 2006b). However, their life-history (*e.g.,* late maturity, small litter size, prolonged breeding interval) is conducive to low intrinsic population growth (*i.e.,* growth in the absence of human-caused mortality), which was estimated at 6 percent to 7.5 percent for the SBS stock during 2004–2006 (Regehr et al. 2010; Hunter et al. 2010). The lifespan of wild polar bears is approximately 25 years (Rode et al. 2020). Females reach sexual maturity at 3–6 years old giving birth 1 year later (Ramsay and Stirling 1988). In the SBS region, females typically give birth at 5 years old (Lentfer & Hensel 1980). On average, females in the SBS produce litter sizes of 1.9 cubs (SD=0.5; Smith et al. 2007, 2010, 2013; Robinson 2014) at intervals that vary from 1 to 3 or more years depending on cub survival (Ramsay and Stirling 1988) and foraging conditions. For example, when foraging conditions are unfavorable, polar bears may delay reproduction in favor of survival (Derocher and Stirling 1992; Eberhardt 2002). The determining factor for growth of polar bear stocks is adult female survival (Eberhardt 1990). In general, rates above 90 percent are essential to sustain polar bear stocks (Amstrup and Durner 1995) given low cub litter survival, which was estimated at 50 percent (90 percent CI: 33–67 percent) for the SBS stock during 2001–2006 (Regehr et al. 2010). In the SBS, the probability that adult females will survive and produce cubs-of-the-year is negatively correlated with ice-free periods over the continental shelf (Regehr et al. 2007a). In general, survival of cubs-of-the-year is positively related to the weight of the mother and their own weight (Derocher and Stirling 1996; Stirling et al. 1999).

Females without dependent cubs typically breed in the spring (Amstrup 2003, Stirling et al. 2016). Pregnant females enter maternity dens between October and December (Durner et al. 2001; Amstrup 2003), and young are usually born between early December and early January (Van de Velde et al. 2003). Only pregnant females den for an extended period during the winter (Rode et al. 2018). Other polar bears may excavate temporary dens to escape harsh winter conditions; however, shelter denning is rare for Alaskan polar bear stocks (Olson et al. 2017).

Typically, SBS females denning on land emerge from the den with their cubs around mid-March (median emergence: March 11, Rode *et al.* 2018, USGS 2018), and commonly begin weaning when cubs are approximately 2.3–2.5 years old (Ramsay and Stirling 1986, Arnould and Ramsay 1994, Amstrup 2003, Rode 2020). Cubs are born blind, with limited fat reserves, and are able to walk only after 60–70 days (Blix and Lentfer 1979; Kenny and Bickel 2005). If a female leaves a den during early denning, cub mortality is likely to occur due to a variety of factors including susceptibility to cold temperatures (Blix and Lentfer 1979, Hansson and Thomassen 1983, Van de Velde 2003), predation (Derocher and Wiig 1999, Amstrup *et al.* 2006b), and mobility limitations (Lentfer 1975). Therefore, it is thought that successful denning, birthing, and rearing activities require a relatively undisturbed environment. A more detailed description of the potential consequences of disturbance to denning females can be found below in *Potential Effects of Oil and Gas Industry Activities on Pacific Walrus, Polar Bear, and Prey Species: Polar Bear: Effects to Denning Bears.* Radio and satellite telemetry studies indicate that denning can occur in multiyear pack ice and on land (Durner et al. 2020). The proportion of dens on land has been increasing along the Alaska region (34.4 percent in 1985–1995 to 55.2 percent in 2007–2013; Olson et al. 2017) likely in response to reductions in stable old ice, which is defined as sea ice that has survived at least one summer's melt (Bowditch 2002), increases in unconsolidated ice, and lengthening of the melt season (Fischbach et al. 2007, Olson et al. 2017). If sea-ice extent in the Arctic continues to decrease and the amount of unstable ice increases, a greater proportion of polar bears may seek to den on land (Durner et al. 2006, Fischbach et al. 2007, Olson et al. 2017).

In Alaska, maternal polar bear dens occur on barrier islands (linear features of low-elevation land adjacent to the main coastline that are separated from the mainland by bodies of water), river bank drainages, and deltas (*e.g.,* those associated with the Colville and Canning Rivers), much of the North Slope coastal plain (in particular within the 1002 Area, *i.e.,* the land designated in section 1002 of the Alaska National Interest Lands Conservation Act—part of ANWR in northeastern Alaska; Amstrup 1993, Durner *et al.* 2006), and coastal bluffs that occur at the interface of mainland and marine habitat (Durner et al. 2006, 2013, 2020; Blank 2013; Wilson and Durner 2020). These types of terrestrial habitat are also designated as critical habitat for the polar bear under the Endangered Species Act (75 FR 76086, December 7, 2010). Management and conservation concerns for the SBS and Chukchi/Bering Seas (CS) polar bear stocks include sea-ice loss due to climate change, human–bear conflict, oil and gas industry activity, oil spills and contaminants, marine shipping, disease, and the potential for

overharvest (Regehr et al. 2017; U.S. Fish and Wildlife Service 2016). Notably, reductions in physical condition, growth, and survival of polar bears have been associated with declines in sea-ice (Rode et al. 2014, Bromaghin et al. 2015, Regehr et al. 2007, Lunn et al. 2016). The attrition of summer Arctic sea-ice is expected to remain a primary threat to polar bear populations (Amstrup et al. 2008, Stirling and Derocher 2012), since projections indicate continued climate warming at least through the end of this century (Atwood et al. 2016a, IPCC 2014) (see section on Climate Change for further details).

In 2008, the Service listed polar bears as threatened under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.;* ESA) due to the loss of sea-ice habitat caused by climate change (73 FR 28212, May 15, 2008). The Service later published a final rule under section 4(d) of the ESA for the polar bear, which was vacated and then reinstated when procedural requirements were satisfied (78 FR 11766, February 20, 2013). This section 4(d) rule provides for measures that are necessary and advisable for the conservation of polar bears. Specifically, the 4(d) rule: (a) Adopts the conservation regulatory requirements of the MMPA and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) for the polar bear as the appropriate regulatory provisions, in most instances; (b) provides that incidental, nonlethal take of polar bears resulting from activities outside the bear's current range is not prohibited under the ESA; (c) clarifies that the 4(d) rule does not alter the section 7 consultation requirements of the ESA; and (d) applies the standard ESA protections for threatened species when an activity is not covered by an MMPA or CITES authorization or exemption.

The Service designated critical habitat for polar bear populations in the United States effective January 6, 2011 (75 FR 76086, December 7, 2010). The designation of critical habitat identifies geographic areas that contain features that are essential for the conservation of a threatened or endangered species and that may require special management or protection. Under section 7 of the ESA, if there is a Federal action, the Service will analyze the potential impacts of the action upon polar bears and any designated critical habitat. Polar bear critical habitat units include barrier island habitat, sea-ice habitat (both described in geographic terms), and terrestrial denning habitat (a functional determination). Barrier island habitat includes coastal barrier islands and spits along Alaska's coast; it is used for denning, refuge from human disturbance, access to maternal dens and feeding habitat, and travel along the coast. Sea-ice habitat is located over the continental shelf and includes water 300 m (~984 ft) or less in depth. Terrestrial denning habitat includes lands within 32 km (~20 mi) of the northern coast of Alaska between the Canadian border and the Kavik River and within 8 km (~5 mi) between the Kavik River and Utqiaġvik. The total area designated under the ESA as critical habitat covers approximately 484,734 km^2 (~187,157 mi^2) and is entirely within the lands and waters of the United States. Polar bear critical habitat is described in detail in the final rule that designated polar bear critical habitat (75 FR 76086, December 7, 2010). A digital copy of the final critical habitat rule is available at: *http://www.fws.gov/r7/fisheries/mmm/polarbear/pdf/federal_register_notice.pdf.*

Stock Size and Range

In Alaska, polar bears have historically been observed as far south in the Bering Sea as St. Matthew Island and the Pribilof Islands (Ray 1971). A detailed description of the SBS polar bear stock can be found in the Service's revised Polar Bear *(Ursus maritimus)* Stock Assessment Report (86 FR 33337, June 24, 2021). Digital copies of these Stock Assessment Report is are available at: *https://www.fws.gov/alaska/sites/default/files/2021-06/Southern%20Beaufort%20Sea%20SAR%20Final_May%2019rev.pdf.* and *https://www.fws.gov/alaska/sites/default/files/2021-06/Chukchi_Bering%20Sea%20SAR%20Final%20May%2019%20rev.pdf.*

Southern Beaufort Sea Stock

The SBS polar bear stock is shared between Canada and Alaska. Radio-telemetry data, combined with ear tag returns from harvested bears, suggest that the SBS stock occupies a region with a western boundary near Icy Cape, Alaska (Scharf *et al.* 2019), and an eastern boundary near Tuktoyaktuk, Northwest Territories, Canada (Durner *et al.* 2018).

The most recent population estimates for the Alaska SBS stock were produced by the U.S. Geological Survey (USGS) in 2020 (Atwood *et al.* 2020) and are based on mark-recapture and collared bear data collected from the SBS stock from 2001 to 2016. The SBS stock declined from 2003 to 2006 (this was also reported by Bromaghin *et al.* 2015) but stabilized from 2006 through 2015. The stock may have increased in size from 2009 to 2012; however, low survival in 2013 appears to have offset those gains. Atwood et al. (2020) provide estimates for the portion of the SBS stock only within the State of Alaska; however, their updated abundance estimate from 2015 is consistent with the estimate from Bromaghin et al. (2015) for 2010. Thus, the number of bears in the SBS stock is thought to have remained constant since the Bromaghin et al. (2015) estimate of 907 bears. This number is also supported by survival rate estimates provided by Atwood et al. (2020) that were relatively high in 2001–2003, decreased during 2004–2008, then improved in 2009, and remained high until 2015, except for much lower rates in 2012.

Pacific Walrus

Pacific walruses constitute a single panmictic population (Beatty et al. 2020) primarily inhabiting the shallow continental shelf waters of the Bering and Chukchi Seas where their distribution is largely influenced by the extent of the seasonal pack ice and prey densities (Lingqvist et al. 2009; Berta and Churchill 2012; USFWS 2017). From April to June, most of the population migrates from the Bering Sea through the Bering Strait and into the Chukchi Sea along lead systems that develop in the sea-ice and that are closely associated with the edge of the seasonal pack ice during the open-water season (Truhkin and Simokon 2018). By July, tens of thousands of animals can be found along the edge of the pack ice from Russian waters to areas west of Point Barrow, Alaska (Fay 1982; Gilbert et al. 1992; Belikov et al. 1996; USFWS 2017). The pack ice has historically advanced rapidly southward in late fall, and most walruses return to the Bering Sea by mid- to late-November. During the winter breeding season, walruses are found in three concentration areas in the Bering Sea where open leads, polynyas, or thin ice occur (Fay 1982; Fay et al. 1984, Garlich-Miller et al. 2011a; Duffy-Anderson et al. 2019). While the specific location of these groups varies annually and seasonally depending upon the extent of the sea-ice, generally one group occurs near the Gulf of Anadyr, another south of St. Lawrence Island, and a third in the southeastern Bering Sea south of Nunivak Island into northwestern Bristol Bay (Fay 1982; Mymrin et al. 1990; Garlich-Miller et al. 2011 USFWS 2017).

Although most walruses remain either in the Chukchi (for adult females and dependent young) or Bering (for adult males) Seas throughout the summer

months, a few occasionally range into the Beaufort Sea in late summer (Mymrin et al. 1990; Garlich-Miller and Jay 2000; USFWS 2017). Industry monitoring reports have observed no more than 38 walruses in the Beaufort Sea ITR geographic region between 1995 and 2015, with only a few instances of disturbance to those walruses (AES Alaska 2015, Kalxdorff and Bridges 2003, USFWS unpubl. data). The USGS and the Alaska Department of Fish and Game (ADF&G) have fitted between 30–60 walruses with satellite transmitters each year during spring and summer since 2008 and 2013 respectively. In 2014, a female tagged by ADF&G spent about 3 weeks in Harrison Bay, Beaufort Sea (ADF&G 2014). The USGS tracking data indicates that at least one tagged walrus ventured into the Beaufort Sea for brief periods in all years except 2011. Most of these movements extend northeast of Utqiagvik to the continental shelf edge north of Smith Bay (USGS 2015). All available information indicates that few walruses currently enter the Beaufort Sea and those that do, spend little time there. The Service and USGS are conducting multiyear studies on the walrus population to investigate movements and habitat use patterns, as it is possible that as sea-ice diminishes in the Chukchi Sea beyond the 5-year period of this rule, walrus distribution and habitat use may change.

Walruses are generally found in waters of 100 m (328 ft) or less where they utilize sea-ice for passive transportation and rest over feeding areas, avoid predators, and birth and nurse their young (Fay 1982; Ray et al. 2006; Rosen 2020). The diet of walruses consists primarily of benthic invertebrates, most notably mollusks (Class Bivalvia) and marine worms (Class Polychaeta) (Fay 1982; Fay 1985; Bowen and Siniff 1999; Born et al. 2003; Dehn et al. 2007; Sheffield and Grebmeier 2009; Maniscalco et al. 2020). When foraging, walruses are capable of diving to great depths with most dives lasting between 5 and 10 minutes with a 1–2-minute surface interval (Fay 1982; Bowen and Siniff 1999; Born et al. 2003; Dehn et al. 2007; Sheffield and Grebmeier 2009). The foraging activity of walruses is thought to have a significant influence on the ecology of the Bering and Chukchi Seas by disturbing the sea floor, thereby releasing nutrients into the water column that provide food for scavenger organisms and contributing to the diversity of the benthic community (Oliver et al. 1983; Klaus et al. 1990; Ray et al. 2006). In addition to feeding on benthic invertebrates, native hunters have also reported incidences of walruses preying on seals, fish, and other vertebrates (Fay 1982; Sheffield and Grebmeier 2009; Seymour et al. 2014).

Walruses are social and gregarious animals that often travel and haul-out onto ice or land in groups where they spend approximately 20–30 percent of their time out of the water (Gilbert 1999; Kastelien 2002; Jefferson et al. 2008; Monson et al. 2013; USFWS 2017). Hauled-out walruses tend to be in close physical contact, with groups ranging from a few animals up to tens of thousands of individuals—the largest aggregations occurring at land haul-outs (Gilbert 1999; Monson et al. 2013; MacCracken 2017). In recent years, the barrier islands north of Point Lay, Alaska, have held large aggregations of walruses (20,000–40,000) in late summer and fall (Monson et al. 2013; USFWS 2017).

The size of the walrus population has never been known with certainty. Based on large sustained harvests in the 18th and 19th centuries, Fay (1957) speculated that the pre-exploitation population was represented by a minimum of 200,000 animals. Since that time, population size following European contact fluctuated markedly in response to varying levels of human exploitation. Large-scale commercial harvests are thought to have reduced the population to 50,000–100,000 animals in the mid-1950s (Fay et al. 1989). Following the implementation of harvest regulations in the 1960s and 1970s, which limited the take of females, the population increased rapidly and likely reached or exceeded the food-based carrying capacity of the region by 1980 (Fay et al. 1989, Fay et al. 1997, Garlich-Miller et al. 2006, MacCracken et al. 2014).

Between 1975 and 1990, aerial surveys conducted jointly by the United States and Russia at 5-year intervals produced population estimates ranging from about 200,000 to 255,000 individuals with large confidence intervals (Fay 1957; Fay 1982; Speckman et al. 2011). Efforts to survey the walrus population were suspended by both countries after 1990 following problems with survey methods that severely limited their utility. In 2006, the United States and Russia conducted another joint aerial survey in the pack ice of the Bering Sea using thermal imaging systems to more accurately count walruses hauled out on sea-ice and applied satellite transmitters to account for walruses in the water (Speckman et al. 2011). In 2013, the Service began a genetic mark-recapture study to estimate population size. An initial analysis of data in the period 2013–2015 led to the most recent estimate of 283,213 Pacific walruses with a 95% confidence interval of 93,000 to 478,975 individuals (Beatty 2017). Although this is the most recent estimate of Pacific walrus population size, it should be used with caution as it is preliminary.

Taylor and Udevitz (2015) used data from five aerial surveys and with ship-based age and sex composition counts that occurred in 1981–1984, 1998, and 1999 (Citta et al. 2014) in a Bayesian integrated population model to estimate population trends and vital rates in the period 1975–2006. They recalculated the 1975–1990 aerial survey estimates based on a lognormal distribution for inclusion in their model. Their results generally agreed with the large-scale population trends identified by Citta et al. (2014) but with slightly different population estimates in some years along with more precise confidence intervals. Ultimately, Taylor and Udevitz (2015) concluded (i) that though their model provides improved clarity on past walrus population trends and vital rates, it cannot overcome the large uncertainties in the available population size data, and (ii) that the absolute size of the Pacific walrus population will continue to be speculative until accurate empirical estimation of the population size becomes feasible.

A detailed description of the Pacific walrus stock can be found in the Pacific Walrus (*Odobenus rosmarus divergens*) Species Status Assessment (USFWS 2017). A digital copy of the Species Status Assessment is available at: *https://ecos.fws.gov/ServCat/DownloadFile/132114?Reference=86869.*

Polar bears are known to prey on walruses, particularly calves, and killer whales *(Orcinus orca)* have been known to take all age classes of walruses (Frost *et al.* 1992, Melnikov and Zagrebin 2005; Rode et al. 2014; Truhkin and Simokon 2018). Predation rates are unknown but are thought to be highest near terrestrial haulout sites where large aggregations of walruses can be found; however, few observations exist of predation upon walruses further offshore.

Walruses have been hunted by coastal Alaska Natives and native people of the Chukotka, Russian Federation, for thousands of years (Fay et al. 1989). Exploitation of the walrus population by Europeans has also occurred in varying degrees since the arrival of exploratory expeditions (Fay et al. 1989). Commercial harvest of walruses ceased in the United States in 1941, and sport

hunting ceased in 1972 with the passage of the MMPA and ceased in 1990 in Russia. Presently, walrus hunting in Alaska is restricted to subsistence use by Alaska Natives. Harvest mortality during 2000–2018 for both the United States and Russian Federation averaged 3,207 (SE = 194) walruses per year. This mortality estimate includes corrections for under-reported harvest and struck and lost animals. Harvests have been declining by about 3 percent per year since 2000 and were exceptionally low in the United States in 2012–2014. Resource managers in Russia have concluded that the population has declined and have reduced harvest quotas in recent years accordingly (Kochnev 2004; Kochnev 2005; Kochnev 2010; pers. comm.; Litovka 2015, pers. comm.) based in part on the lower abundance estimate generated from the 2006 survey. Total harvest quotas in Russia were further decreased in 2020 to 1,088 walruses (Ministry of Agriculture of the Russian Federation Order of March 23, 2020). Intra-specific trauma at coastal haulouts is also a known source of injury and mortality (Garlich-Miller et al. 2011). The risk of stampede-related injuries increases with the number of animals hauled out and with the duration spent on coastal haulouts, with calves and young being the most vulnerable to suffer injuries and/or mortality (USFWS 2017). However, management and protection programs in both the United States and the Russian Federation have been somewhat successful in reducing disturbances and large mortality events at coastal haulouts (USFWS 2015).

Climate Change

Global climate change will impact the future of both Pacific walrus and polar bear populations. As atmospheric greenhouse gas concentrations increase so will global temperatures (Pierrehumbert 2011; IPCC 2014) with substantial implications for the Arctic environment and its inhabitants (Bellard et al. 2012, Scheffers et al. 2016, Harwood et al. 2001, Nunez et al. 2019). The Arctic has warmed at twice the global rate (IPCC 2014), and long-term data sets show that substantial reductions in both the extent and thickness of Arctic sea-ice cover have occurred over the past 40 years (Meier et al. 2014, Frey et al. 2015). Stroeve et al. (2012) estimated that, since 1979, the minimum area of fall Arctic sea-ice declined by over 12 percent per decade through 2010. Record low minimum areas of fall Arctic sea-ice extent were recorded in 2002, 2005, 2007, and 2012. Further, observations of sea-ice in the Beaufort Sea have shown a trend since 2004 of sea-ice break-up earlier in the year, re-formation of sea-ice later in the year, and a greater proportion of first-year ice in the ice cover (Galley et al. 2016). The overall trend of decline of Arctic sea-ice is expected to continue for the foreseeable future (Stroeve et al. 2007; Amstrup et al. 2008; Hunter et al. 2010; Overland and Wang 2013; 73 FR 28212, May 15, 2008; IPCC 2014). Decline in Arctic sea ice affects Arctic species through habitat loss and altered trophic interactions. These factors may contribute to population distribution changes, population mixing, and pathogen transmission (Post et al. 2013), which further impact population health.

For polar bears, sea-ice habitat loss due to climate change has been identified as the primary cause of conservation concern (*e.g.,* Stirling and Derocher 2012, Atwood et al. 2016b, USFWS 2016). A 42 percent loss of optimal summer polar bear habitat throughout the Arctic is projected for the decade of 2045–2054 (Durner et al. 2009). A recent global assessment of the vulnerability of the 19 polar bear stocks to future climate warming ranked the SBS as one of the three most vulnerable stocks (Hamilton and Derocher 2019). The study, which examined factors such as the size of the stock, continental shelf area, ice conditions, and prey diversity, attributed the high vulnerability of the SBS stock primarily to deterioration of ice conditions. The SBS polar bear stock occurs within the Polar Basin Divergent Ecoregion (PBDE), which is characterized by extensive sea-ice formation during the winters and the sea ice melting and pulling away from the coast during the summers (Amstrup et al. 2008). Projections show that polar bear stocks within the PBDE may be extirpated within the next 45–75 years at current rates of sea-ice declines (Amstrup et al. 2007, Amstrup et al. 2008). Atwood et al. (2016) also predicted that polar bear stocks within the PBDE will be more likely to greatly decrease in abundance and distribution as early as the 2020–2030 decade primarily as a result of sea-ice habitat loss.

Sea-ice habitat loss affects the distribution and habitat use patterns of the SBS polar bear stock. When sea ice melts during the summer, polar bears in the PBDE may either stay on land throughout the summer or move with the sea ice as it recedes northward (Durner et al. 2009). The SBS stock, and to a lesser extent the Chukchi Sea stock, are increasingly utilizing marginal habitat (*i.e.,* land and ice over less productive waters) (Ware et al. 2017). Polar bear use of Beaufort Sea coastal areas has increased during the fall open-water period (June through October). Specifically, the percentage of radio-collared adult females from the SBS stock utilizing terrestrial habitats has tripled over 15 years, and SBS polar bears arrive onshore earlier, stay longer, and leave to the sea ice later (Atwood et al. 2016b). This change in polar bear distribution and habitat use has been correlated with diminished sea ice and the increased distance of the pack ice from the coast during the open-water period (*i.e.,* the less sea ice and the farther from shore the leading edge of the pack ice is, the more bears are observed onshore) (Schliebe et al. 2006; Atwood et al. 2016b).

The current trend for sea-ice in the SBS region will result in increased distances between the ice edge and land, likely resulting in more bears coming ashore during the open-water period (Schliebe et al. 2008). More polar bears on land for a longer period of time may increase both the frequency and the magnitude of polar bear exposure to human activities, including an increase in human–bear interactions (Towns et al. 2009, Schliebe et al. 2008, Atwood et al. 2016b). Polar bears spending more time in terrestrial habitats also increases their risk of exposure to novel pathogens that are expanding north as a result of a warmer Arctic (Atwood et al. 2016b, 2017). Heightened immune system activity and more infections (indicated by elevated number of white blood cells) have been reported for the SBS polar bears that summer on land when compared to those on sea ice (Atwood et al. 2017; Whiteman et al. 2019). The elevation in immune system activity represents additional energetic costs that could ultimately impact stock and individual fitness (Atwood et al. 2017; Whiteman et al. 2019). Prevalence of parasites such as the nematode *Trichinella nativa* in many Arctic species, including polar bears, pre-dates the recent global warming. However, parasite prevalence could increase as a result of changes in diet (*e.g.,* increased reliance on conspecific scavenging) and feeding habits (*e.g.,* increased consumption of seal muscle) associated with climate-induced reduction of hunting opportunities for polar bears (Penk et al. 2020, Wilson et al. 2017).

The continued decline in sea-ice is also projected to reduce connectivity among polar bear stocks and potentially lead to the impoverishment of genetic diversity that is key to maintaining viable, resilient wildlife populations (Derocher et al. 2004, Cherry et al. 2013, Kutchera et al. 2016). The circumpolar polar bear population has been divided into six genetic clusters: The Western Polar Basin (which includes the SBS

and CS stocks), the Eastern Polar Basin, the Western and Eastern Canadian Archipelago, and Norwegian Bay (Malenfant et al. 2016). There is moderate genetic structure among these clusters, suggesting polar bears broadly remain in the same cluster when breeding. While there is currently no evidence for strong directional gene flow among the clusters (Malenfant et al. 2016), migrants are not uncommon and can contribute to gene flow across clusters (Kutschera et al. 2016). Changing sea-ice conditions will make these cross-cluster migrations (and the resulting gene flow) more difficult in the future (Kutschera et al. 2016).

Additionally, habitat loss from decreased sea-ice extent may impact polar bear reproductive success by reducing or altering suitable denning habitat and extending the polar bear fasting season (Rode et al. 2018, Stirling and Derocher 2012, Molnár et al. 2020). In the early 1990s, approximately 50 percent of the annual maternal dens of the SBS polar bear stock occurred on land (Amstrup and Gardner 1994). Along the Alaskan region the proportion of terrestrial dens increased from 34.4 percent in 1985–1995 to 55.2 percent in 2007–2013 (Olson et al. 2017). Polar bears require a stable substrate for denning. As sea-ice conditions deteriorate and become less stable, sea-ice dens can become vulnerable to erosion from storm surges (Fischbach et al. 2007). Under favorable autumn snowfall conditions, SBS females denning on land had higher reproductive success than SBS females denning on sea-ice. Factors that may influence the higher reproductive success of females with land-based dens include longer denning periods that allow cubs more time to develop, higher snowfall conditions that strengthen den integrity throughout the denning period (Rode et al. 2018), and increased foraging opportunities on land (*e.g.,* scavenging on Bowhead whale carcasses) (Atwood et al. 2016b). While SBS polar bear females denning on land may experience increased reproductive success, at least under favorable snowfall conditions, it is possible that competition for suitable denning habitat on land may increase due to sea-ice decline (Fischbach et al. 2007) and land-based dens may be more vulnerable to disturbance from human activities (Linnell et al. 2000).

Polar bear reproductive success may also be impacted by declines in sea ice through an extended fasting season (Molnár et al. 2020). By 2100, recruitment is predicted to become jeopardized in nearly all polar bear stocks if greenhouse gas emissions remain uncurbed (RCP8.5 [Representative Concentration Pathway 8.5] scenario) as fasting thresholds are increasingly exceeded due to declines in sea-ice across the Arctic circumpolar range (Molnár et al. 2020). As the fasting season increases, most of these 12 stocks, including in the SBS, are expected to first experience significant adverse effects on cub recruitment followed by effects on adult male survival and lastly on adult female survival (Molnár et al. 2020). Without mitigation of greenhouse gas emissions and assuming optimistic polar bear responses (*e.g.,* reduced movement to conserve energy), cub recruitment in the SBS stock has possibly been already adversely impacted since the late 1980s, while detrimental impacts on male and female survival are forecasted to possibly occur in the late 2030s and 2040s, respectively.

Extended fasting seasons are associated with poor body condition (Stirling and Derocher 2012), and a female's body condition at den entry is a critical factor that determines whether the female will produce cubs and the cubs' chance of survival during their first year (Rode et al. 2018). Additionally, extended fasting seasons will cause polar bears to depend more heavily on their lipid reserves for energy, which can release lipid-soluble contaminants, such as persistent organic pollutants and mercury, into the bloodstream and organ tissues. The increased levels of contaminants in the blood and tissues can affect polar bear health and body condition, which has implications for reproductive success and survival (Jenssen et al. 2015).

Changes in sea-ice can impact polar bears by altering trophic interactions. Differences in sea-ice dynamics, such as the timing of ice formation and breakup, as well as changes in sea-ice type and concentration, may impact the distribution of polar bears and/or their prey's occurrence and reduce polar bears' access to prey. A climate-induced reduction in overlap between female polar bears and ringed seals was detected after a sudden sea-ice decline in Norway that limited the ability of females to hunt on sea-ice (Hamilton et al. 2017). While polar bears are opportunistic and hunt other species, their reliance on ringed seals is prevalent across their range (Thiemann et al. 2007, 2008; Florko et al. 2020; Rode et al. 2021). Male and female polar bears exhibit differences in prey consumption. Females typically consume more ringed seals compared to males, which is likely related to more limited hunting opportunities for females (*e.g.,* prey size constraints) (McKinney et al. 2017, Bourque et al. 2020). Female body condition has been positively correlated with consumption of ringed seals, but negatively correlated with the consumption of bearded seals (Florko et al. 2020). Consequently, females are more prone to decreased foraging and reproductive success than males during years in which unfavorable sea-ice conditions limit polar bears' access to ringed seals (Florko et al. 2020).

In the SBS stock, adult female and juvenile polar bear consumption of ringed seals was negatively correlated with winter Arctic oscillation, which affects sea-ice conditions. This trend was not observed for male polar bears. Instead, male polar bears consumed more bowhead whale as a result of scavenging the carcasses of subsistence-harvested bowhead whales during years with a longer ice-free period over the continental shelf. It is possible that these alterations in sea-ice conditions may limit female polar bears' access to ringed seals, and male polar bears may rely more heavily on alternative onshore food resources in the southern Beaufort Sea region (McKinney et al. 2017). Changes in the availability and distribution of seals may influence polar bear foraging efficiency. Reduction in sea ice is expected to render polar bear foraging energetically more demanding, as moving through fragmented sea ice and open-water swimming require more energy than walking across consolidated sea ice (Cherry et al. 2009, Pagano et al. 2012, Rode et al. 2014, Durner et al. 2017). Inefficient foraging can contribute to nutritional stress and poor body condition, which can have implications for reproductive success and survival (Regehr et al. 2010).

The decline in Arctic sea ice is associated with the SBS polar bear stock spending more time in terrestrial habitats (Schliebe et al. 2008). Recent changes in female denning habitat and extended fasting seasons as a result of sea-ice decline may affect the reproductive success of the SBS polar bear stock (Rode et al. 2018; Stirling and Derocher 2012; Molnár et al. 2020). Other relevant factors that could negatively affect the SBS polar bear stock include changes in prey availability, reduced genetic diversity through limited population connectivity and/or hybridization with other bear species, increased exposure to disease and parasite prevalence and/or dissemination, impacts of human activities (oil and gas exploration/extraction, shipping, harvesting, etc.) and pollution (Post et al. 2013; Hamilton and Derocher 2019). Based on the projections of sea-ice decline in the

Beaufort Sea region and demonstrated impacts on SBS polar bear utilization of sea-ice and terrestrial habitats, the Service anticipates that polar bear use of the Beaufort Sea coast will continue to increase during the open-water season.

For walruses, climate change may affect habitat and prey availability. The loss of Arctic sea ice has affected walrus distribution and habitat use in the Bering and Chukchi Seas (Jay et al. 2012). Walruses use sea ice as a breeding site, a location to birth and nurse young, and a protective cover from storms and predation; however, if the sea ice retreats north of the continental shelf break in the Chukchi Sea, walruses can no longer use it for these purposes. Thus, loss of sea ice is associated with increased use of coastal haul-outs during the summer, fall, and early winter (Jay et al. 2012). Coastal haulouts are potentially dangerous for walruses, as they can stampede toward the water when disturbed, resulting in injuries and mortalities (Garlich-Miller et al. 2011). Use of land haulouts is also more energetically costly, with walruses hauled out on land spending more time in water but not foraging than those hauled out on sea ice. This difference has been attributed to an increase in travel time in the water from land haulouts to foraging areas (Jay et al. 2017). Higher walrus abundance at these coastal haulouts may also increase exposure to environmentally and density-dependent pathogens (Post et al. 2013). Climate change impacts through habitat loss and changes in prey availability could affect walrus population stability. It is unknown if walruses will utilize the Beaufort Sea more heavily in the future due to climate change effects; however, considering the low number of walruses observed in the Beaufort Sea (see *Take Estimates for Pacific Walruses and Polar Bears*), it appears that walruses will remain uncommon in the Beaufort Sea for the next 5 years.

Potential Effects of the Specified Activities on Subsistence Uses

Polar Bear

Based on subsistence harvest reports, polar bear hunting is less prevalent in communities on the north coast of Alaska than it is in west coast communities. There are no quotas under the MMPA for Alaska Native polar bear harvest in the Southern Beaufort Sea; however, there is a Native-to-Native agreement between the Inuvialuit in Canada and the Inupiat in Alaska. This agreement, the Inuvialuit-Inupiat Polar Bear Management Agreement, established quotas and recommendations concerning protection of denning females, family groups, and methods of take. Although this Agreement is voluntary in the United States and does not have the force of law, legally enforceable quotas are administered in Canada. In Canada, users are subject to provincial regulations consistent with the Agreement. Commissioners for the Agreement set the original quota at 76 bears in 1988, split evenly between the Inuvialuit in Canada and the Inupiat in the United States. In July 2010, the quota was reduced to 70 bears per year. Subsequently, in Canada, the boundary of the SBS stock with the neighboring Northern Beaufort Sea stock was adjusted through polar bear management bylaws in the Inuvialuit Settlement Region in 2013, affecting Canadian quotas and harvest levels from the SBS stock. The current subsistence harvest established under the Agreement of 56 bears total (35 in the United States and 21 in Canada) reflect this change.

The Alaska Native subsistence harvest of polar bears from the SBS population has declined. From 1990 to 1999, an average of 42 bears were taken annually. The average subsistence harvest decreased to 21 bears annually in the period 2000–2010 and 11 bears annually during 2015–2020. The reason for the decline of harvested polar bears from the SBS population is unknown. Alaska Native subsistence hunters and harvest reports have not indicated a lack of opportunity to hunt polar bears or disruption by Industry activity.

Pacific Walrus

Few walruses are harvested in the Beaufort Sea along the northern coast of Alaska since their primary range is in the Bering and Chukchi Seas. Walruses constitute a small portion of the total marine mammal harvest for the village of Utqiagvik. Hunters from Utqiagvik have harvested 407 walruses since the year 2000 with 65 harvested since 2015. Walrus harvest from Nuiqsut and Kaktovik is opportunistic. They have reported taking four walruses since 1993. None of the walrus harvests for Utqiagvik, Nuiqsut, or Kaktovik from 2014 to 2020 occurred within the Beaufort Sea ITR region.

Evaluation of Effects of the Specified Activities on Subsistence Uses

There are three primary Alaska Native communities on the Beaufort Sea whose residents rely on Pacific walruses and polar bears for subsistence use: Utqiagvik, Nuiqsut, and Kaktovik. Utqiagvik and Kaktovik are expected to be less affected by the Industry's proposed activities than Nuiqsut. Nuiqsut is located within 5 mi of ConocoPhillips' Alpine production field to the north and ConocoPhillips' Alpine Satellite development field to the west. However, Nuiqsut hunters typically harvest polar bears from Cross Island during the annual fall bowhead whaling. Cross Island is approximately 16 km (~10 mi) offshore from the coast of Prudhoe Bay. We have received no evidence or reports that bears are altering their habitat use patterns, avoiding certain areas, or being affected in other ways by the existing level of oil and gas activity near communities or traditional hunting areas that would diminish their availability for subsistence use. However, as is discussed in *Evaluation of Effects of Specified Activities on Pacific Walruses, Polar Bears, and Prey Species* below, the Service has found some evidence of fewer maternal polar bear dens near industrial infrastructure than expected.

Changes in Industry activity locations may trigger community concerns regarding the effect on subsistence uses. Industry must remain proactive to address potential impacts on the subsistence uses by affected communities through consultations and, where warranted, POCs. Evidence of communication with the public about activities will be required as part of an LOA. Current methods of communication are variable and include venues such as public forums, which allow communities to express feedback prior to the initiation of operations, the employ of subsistence liaisons, and presentations to regional commissions. If community subsistence use concerns arise from new activities, appropriate mitigation measures, such as cessation of activities in key locations during hunting seasons, are available and will be applied as a part of the POC.

No unmitigable concerns from the potentially affected communities regarding the availability of walruses or polar bears for subsistence uses have been identified through Industry consultations with the potentially affected communities of Utqiagvik, Kaktovik, or Nuiqsut. During the 2016–2021 ITR period, Industry groups have communicated with Native communities and subsistence hunters through subsistence representatives, community liaisons, and village outreach teams as well as participation in community and commission meetings. Based on information gathered from these sources, it appears that subsistence hunting opportunities for walruses and polar bears have not been affected by past Industry activities conducted pursuant to the 2016–2021

Beaufort ITR and are not likely to be affected by the activities described in this ITR. Given the similarity between the nature and extent of Industry activities covered by the prior Beaufort Sea ITR and those specified in AOGA's pending Request, and the continued requirement for Industry to consult and coordinate with Alaska Native communities and representative subsistence hunting and co-management organizations (and develop a POC if necessary), we do not anticipate that the activities specified in AOGA's pending Request will have any unmitigable effects on the availability of Pacific walruses or polar bears for subsistence uses.

Potential Effects of the Specified Activities on Pacific Walruses, Polar Bears, and Prey Species

Industry activities can affect individual walruses and polar bears in numerous ways. Below, we provide a summary of the documented and potential effects of oil and gas industrial activities on both polar bears and walruses. The effects analyzed included harassment, lethal take, and exposure to oil spills.

Polar Bear: Human–Polar Bear Encounters

Oil and gas industry activities may affect individual polar bears in numerous ways during the open-water and ice-covered seasons. Polar bears are typically distributed in offshore areas associated with multiyear pack ice from mid-November to mid-July. From mid-July to mid-November, polar bears can be found in large numbers and high densities on barrier islands, along the coastline, and in the nearshore waters of the Beaufort Sea, particularly on and around Barter and Cross Islands. This distribution leads to a significantly higher number of human–polar bear encounters on land and at offshore structures during the open-water period than other times of the year. Bears that remain on the multiyear pack ice are not typically present in the ice-free areas where vessel traffic occurs, as barges and vessels associated with Industry activities travel in open water and avoid large ice floes.

On land, the majority of Industry's bear observations occur within 2 km (1.2 mi) of the coastline. Industry facilities within the offshore and coastal areas are more likely to be approached by polar bears and may act as physical barriers to movements of polar bears. As bears encounter these facilities, the chances for human–bear interactions increase. The Endicott and West Dock causeways, as well as the facilities supporting them, have the potential to act as barriers to movements of polar bears because they extend continuously from the coastline to the offshore facility. However, polar bears have frequently been observed crossing existing roads and causeways. Offshore production facilities, such as Northstar, Spy Island, and Oooguruk, have frequently been approached by polar bears but appear to present only an inconsequential small-scale, local obstruction to the bears' movement. Of greater concern is the increased potential for human–polar bear interaction at these facilities. Encounters are more likely to occur during the fall at facilities on or near the coast. Polar bear interaction plans, training, and monitoring required by past ITRs have proven effective at reducing human–polar bear encounters and the risks to bears and humans when encounters occur. Polar bear interaction plans detail the policies and procedures that Industry facilities and personnel will implement to avoid attracting and interacting with polar bears as well as minimizing impacts to the bears. Interaction plans also detail how to respond to the presence of polar bears, the chain of command and communication, and required training for personnel. Industry uses technology to aid in detecting polar bears including bear monitors, closed-circuit television, video cameras, thermal cameras, radar devices, and motion-detection systems. In addition, some companies take steps to actively prevent bears from accessing facilities by using safety gates and fences.

The noises, sights, and smells produced by the proposed project activities could disturb and elicit variable responses from polar bears. Noise disturbance can originate from either stationary or mobile sources. Stationary sources include construction, maintenance, repair and remediation activities, operations at production facilities, gas flaring, and drilling operations. Mobile sources include aircraft traffic, geotechnical surveys, ice road construction, vehicle traffic, tracked vehicles, and snowmobiles.

The potential behavioral reaction of polar bears to the proposed activities can vary by activity type. Camp odors may attract polar bears, potentially resulting in human–bear encounters, intentional hazing, or possible lethal take in defense of human life (see 50 CFR 18.34 for further guidance on passive polar bear deterrence measures). Noise generated on the ground by industrial activity may cause a behavioral (*e.g.,* escape response) or physiologic (*e.g.,* increased heart rate, hormonal response) (Harms et al. 1997; Tempel and Gutierrez 2003) response. The available studies of polar bear behavior indicate that the intensity of polar bear reaction to noise disturbance may be based on previous interactions, sex, age, and maternal status (Anderson and Aars 2008; Dyck and Baydack 2004).

Polar Bear: Effects of Aircraft Overflights

Bears on the surface experience increased noise and visual stimuli when planes or helicopters fly above them, both of which may elicit a biologically significant behavioral response. Sound frequencies produced by aircraft will likely fall within the hearing range of polar bears (see Nachtigall et al. 2007) and will thus be audible to animals during flyovers or when operating in proximity to polar bears. Polar bears likely have acute hearing with previous sensitivities demonstrated between 1.4–22.5 kHz (tests were limited to 22.5 kHz; Nachtigall et al. 2007). This range, which is wider than that seen in humans, supports the idea that polar bears may experience temporary (called temporary threshold shift, or TTS) or permanent (called permanent threshold shift, or PTS) hearing impairment if they are exposed to high-energy sound. While species-specific TTS and PTS thresholds have not been established for polar bears, thresholds have been established for the general group ''other marine carnivores'' which includes both polar bears and walruses (Southall et al. 2019). Through a series of systematic modeling procedures and extrapolations, Southall et al. (2019) have generated modified noise exposure thresholds for both in-air and underwater sound (Table 1).

TABLE 1—TEMPORARY THRESHOLD SHIFT (TTS) AND PERMANENT THRESHOLD SHIFT (PTS) THRESHOLDS ESTABLISHED BY SOUTHALL ET AL. (2019) THROUGH MODELING AND EXTRAPOLATION FOR ''OTHER MARINE CARNIVORES,'' WHICH INCLUDES BOTH POLAR BEARS AND WALRUSES

	TTS			PTS		
	Non-impulsive	Impulsive		Non-impulsive	Impulsive	
	SEL_{CUM}	SEL_{CUM}	Peak SPL	SEL_{CUM}	SEL_{CUM}	Peak SPL
Air	157	146	161	177	161	167
Water	199	188	226	219	203	232

Values are weighted for other marine carnivores' hearing thresholds and given in cumulative sound exposure level (SEL_{CUM} dB re $(20\mu Pa)^2s$ in air and SEL_{CUM} dB re $(1\ \mu Pa)^2s$ in water) for impulsive and non-impulsive sounds, and unweighted peak sound pressure level in air (dB re 20μPa) and water (dB 1μPa) (impulsive sounds only).

During an FAA test, test aircraft produced sound at all frequencies measured (50 Hz to 10 kHz) (Healy 1974; Newman 1979). At frequencies centered at 5 kHz, jets flying at 300 m (984 ft) produced ⅓ octave band noise levels of 84 to 124 dB, propeller-driven aircraft produced 75 to 90 dB, and helicopters produced 60 to 70 dB (Richardson et al. 1995). Thus, the frequency and level of airborne sounds typically produced by Industry is unlikely to cause temporary or permanent hearing damage unless marine mammals are very close to the sound source. Although temporary or permanent hearing damage is not anticipated, impacts from aircraft overflights have the potential to elicit biologically significant behavioral responses from polar bears. Observations of polar bears during fall coastal surveys, which flew at much lower altitudes than typical Industry flights (see *Estimating Take Rates of Aircraft Activities*), indicate that the reactions of non-denning polar bears is typically varied but limited to short-term changes in behavior ranging from no reaction to running away. Bears associated with dens have been shown to increase vigilance, initiate rapid movement, and even abandon dens when exposed to low-flying aircraft (see *Effects to Denning Bears* for further discussion). Aircraft activities can impact bears over all seasons; however, during the summer and fall seasons, aircraft have the potential to disturb both individuals and congregations of polar bears. These onshore bears spend most of their time resting and limiting their movements on land. Exposure to aircraft traffic is expected to result in changes in behavior, such as going from resting to walking or running and, therefore, has the potential to be energetically costly. Mitigation measures, such as minimum flight elevations over polar bears and habitat areas of concern as well as flight restrictions around known polar bear aggregations when safe, are included in this ITR to achieve least practicable adverse impact to polar bears by aircraft.

Polar Bear: Effects of In-Water Activities

In-water sources of sound, such as pile driving, screeding, dredging, or vessel movement, may disturb polar bears. In the open-water season, Industry activities are generally limited to relatively ice-free, open water. During this time in the Beaufort Sea, polar bears are typically found either on land or on the pack ice, which limits the chances of the interaction of polar bears with offshore Industry activities. Though polar bears have been observed in open water miles from the ice edge or ice floes, the encounters are relatively rare (although the frequency of such observations may increase due to sea ice change). However, if bears come in contact with Industry operations in open water, the effects of such encounters likely include no more than short-term behavioral disturbance.

While polar bears swim in and hunt from open water, they spend less time in the water than most marine mammals. Stirling (1974) reported that polar bears observed near Devon Island during late July and early August spent 4.1 percent of their time swimming and an additional 0.7 percent engaged in aquatic stalking of prey. More recently, application of tags equipped with time-depth recorders indicate that aquatic activity of polar bears is greater than was previously thought. In a study published by Lone et al. (2018), 75 percent of polar bears swam daily during open-water months, with animals spending 9.4 percent of their time in July in the water. Both coastal- and pack-ice-dwelling animals were tagged, and there were no significant differences in the time spent in the water by animals in the two different habitat types. While polar bears typically swim with their ears above water, Lone et al. (2018) found polar bears in this study that were fitted with depth recorders (n=6) spent approximately 24 percent of their time in the water with their head underwater. Thus, for the individuals followed as a part of the study, an average of 2.2 percent of the day, or 31 minutes, were spent with their heads underwater.

The pile driving, screeding, dredging, and other in-water activities proposed by Industry introduce substantial levels of noise into the marine environment. Underwater sound levels from construction along the North Slope have been shown to range from 103 decibels (dB) at 100 m (328 ft) for auguring to 143 dB at 100 m (328 ft) for pile driving (Greene et al. 2008) with most of the energy below 100 Hz. Airborne sound levels from these activities range from 65 dB at 100 m (328 ft) for a bulldozer and 81 dB at 100 m (328 ft) for pile driving, with most of the energy for in-air levels also below 100 Hz (Greene et al. 2008). Therefore, in-water activities are not anticipated to result in temporary or permanent damage to polar bear hearing.

In 2012, during the open-water season, Shell vessels encountered a few polar bears swimming in ice-free water more than 70 mi (112.6 km) offshore in the Chukchi Sea. In those instances, the bears were observed to either swim away from or approach the Shell vessels. Sometimes a polar bear would swim around a stationary vessel before leaving. In at least one instance a polar bear approached, touched, and investigated a stationary vessel from the water before swimming away.

Polar bears are more likely to be affected by on-ice or in-ice Industry activities versus open-water activities. From 2009 through 2014, there were a few Industry observation reports of polar bears during on-ice activities. Those observations were primarily of bears moving through an area during winter seismic surveys on near-shore ice. The disturbance to bears moving across the surface is frequently minimal, short-term, and temporary due to the mobility of such projects and limited to

small-scale alterations to bear movements.

Polar Bear: Effects to Denning Bears

Known polar bear dens in the Beaufort Sea ITR region, whether discovered opportunistically or as a result of planned surveys such as tracking marked bears or den detection surveys, are monitored by the Service. However, these known denning sites are only a small percentage of the total active polar bear dens for the SBS stock in any given year. Each year, Industry coordinates with the Service to conduct surveys to determine the location of Industry's activities relative to known dens and denning habitat. Under past ITRs Industry activities have been required to avoid known polar bear dens by 1.6 km (1 mi). However, occasionally an unknown den may be encountered during Industry activities. When a previously unknown den is discovered in proximity to Industry activity, the Service implements mitigation measures such as the 1.6-km (1-mi) activity exclusion zone around the den and 24-hour monitoring of the site.

The responses of denning bears to disturbance and the consequences of these responses can vary throughout the denning process. Consequently, we divide the denning period into four stages when considering impacts of disturbance: Den establishment, early denning, late denning, and post-emergence.

Den Establishment

The den establishment period begins in autumn near the time of implantation when pregnant females begin scouting for, excavating, and occupying a den. The timing of den establishment is likely governed by a variety of environmental factors, including snowfall events (Zedrosser et al. 2006; Evans et al. 2016; Pigeon et al. 2016), accumulation of snowpack (Amstrup and Gardner 1994; Durner et al. 2003, 2006), temperature (Rode et al. 2018), and timing of sea ice freeze-up (Webster et al. 2014). Spatial and temporal variation in these factors may explain variability in the timing of den establishment, which occurs between October and December in the SBS stock (Durner et al. 2001; Amstrup 2003). Rode et al. (2018) estimated November 15 as the mean date of den entry for bears in the SBS stock.

The den establishment period ends with the birth of cubs in early to mid-winter (Ramsay and Stirling 1988) after a gestation period that is likely similar to the ~60-day period documented for brown bears (Tsubota et al. 1987). Curry et al. (2015) found the mean and median birth dates for captive polar bears in the Northern Hemisphere were both November 29. Similarly, Messier et al. (1994) estimated that most births had occurred by December 15 in the Canadian Arctic Archipelago based on activity levels recorded by sensors on females in maternity dens.

Much of what is known of the effects of disturbance during the den establishment period comes from studies of polar bears captured by researchers in autumn. Although capture is a severe form of disturbance atypical of events likely to occur during oil and gas activities, responses to capture can inform our understanding of how polar bears respond to substantial levels of disturbance. Ramsay and Stirling (1986) reported that 10 of 13 pregnant females that were captured and collared at dens in October or November abandoned their existing dens. Within 1–2 days after their release, these bears moved a median distance of 24.5 km and excavated new maternal dens. The remaining three polar bears reentered their initial dens or different dens <2 km from their initial den soon after being released. Amstrup (1993, 2003) documented a similar response in Alaska and reported 5 of 12 polar bears abandoned den sites and subsequently denned elsewhere following disturbance during autumn, with the remaining 7 bears remaining at their original den site.

The observed high rate of den abandonment during autumn capture events suggests that polar bears have a low tolerance threshold for intense disturbance during den initiation and are willing to expend energy to avoid further disturbance. Energy expenditures during den establishment are not replenished because female ursids do not eat or drink during denning and instead rely solely on stored body fat (Nelson et al.1983; Spady et al. 2007). Consequently, because female body condition during denning affects the size and subsequent survival of cubs at emergence from the den (Derocher and Stirling 1996; Robbins et al. 2012), disturbances that cause additional energy expenditures in fall could have latent effects on cubs in the spring.

The available published research does not conclusively demonstrate the extent to which capture or den abandonment during den initiation is consequential for survival and reproduction. Ramsay and Stirling (1986) reported that captures (also known as handling) of females did not significantly affect numbers and mean weights of cubs, but the overall mean litter size and weights of cubs born to previously handled mothers consistently tended to be slightly lower than those of mothers not previously handled. Amstrup (1993) found no significant effect of handling on cub weight, litter size, or survival. Similarly, Seal et al. (1970) reported no loss of pregnancy among captive ursids following repeated chemical immobilization and handling. However, Lunn et al. (2004) concluded that handling and observations of pregnant female polar bears in the autumn resulted in significantly lighter female, but not male, cubs in spring. Swenson et al. (1997) found that pregnant female grizzly bears (*U. arctos horribilis*) that abandoned excavated dens pre-birth lost cubs at a rate 10 times higher (60%) than bears that did not abandon dens (6%).

Although disturbances during the den establishment period can result in pregnant females abandoning a den site and/or incurring energetic or reproductive costs, fitness consequences are relatively small during this period compared to after the birth of cubs because females are often able to identify and excavate new sites within the temporal period that den establishment occurs under undisturbed conditions (Amstrup 1993; Lunn et al. 2004). Consequently, prior to giving birth, disturbances are unlikely to result in injury or a reduction in the probability of survival of a pregnant female or her cubs. However, responses by polar bears to anthropogenic activities can lead to the disruption of biologically important behaviors associated with denning.

Early Denning

The second denning period we identified, early denning, begins with the birth of cubs and ends 60 days after birth. Polar bear cubs are altricial and are among the most undeveloped placental mammals at birth (Ramsay and Dunbrack 1986). Newborn polar bears weigh ~0.6 kg, are blind, and have limited fat reserves and fur, which provides little thermoregulatory value (Blix and Lentfer 1979; Kenny and Bickel 2005). Roughly 2 weeks after birth, their ability to thermoregulate begins to improve as they grow longer guard hairs and an undercoat (Kenny and Bickel 2005). Cubs first open their eyes at approximately 35 days after birth (Kenny and Bickel 2005) and achieve sufficient musculoskeletal development to walk at 60–70 days (Kenny and Bickel 2005), but movements may still be clumsy at this time (Harington 1968). At approximately 2 months of age, their capacity for thermoregulation may facilitate survival outside of the den and is the minimum time required for cubs

to be able to survive outside of the den. However, further development inside the den greatly enhances the probability of survival (Amstrup 1993, Amstrup and Gardner 1994, Smith et al. 2007, Rode et al. 2018). Cubs typically weigh 10–12 kg upon emergence from the den in the spring at approximately 3.5 months old (Harington 1968, Lønø 1970).

Based on these developmental milestones, we consider 60 days after birth to mark the end of the early denning period. Currently, we are not aware of any studies directly documenting birth dates of polar bear cubs in the wild; however, several studies have estimated parturition based on indirect metrics. Van de Velde et al. (2003) evaluated historic records of bears legally harvested in dens. Their findings suggest that cubs were born between early December and early January. Additionally, Messier et al. (1994) found that the activity levels of radio-collared females dropped significantly in mid-December, leading the authors to conclude that a majority of births occurred before or around 15 December. Because cub age is not empirically known, we consider early denning to end on 13 February, which is 60 days after the estimated average birth date of 15 December.

Although disturbance to denning bears can be costly at any stage in the denning process, consequences in early denning can be especially high because of the vulnerability of cubs early in their development (Elowe and Dodge 1989, Amstrup and Gardner 1994, Rode et al. 2018). If a female leaves a den during early denning, cub mortality is likely to occur due to a variety of factors including susceptibility to cold temperatures (Blix and Lentfer 1979, Hansson and Thomassen 1983, Van de Velde 2003), predation (Derocher and Wiig 1999, Amstrup et al. 2006b), and mobility limitations (Lentfer 1975). Thus, we can expect a high probability that cubs will suffer lethal take if they emerge early during this stage. Further, adult females that depart the den site during early denning are likely to experience physiological stresses such as increased heart rate (Craighead et al. 1976, Laske et al. 2011) or increased body temperature (Reynolds et al. 1986) that can result in significant energy expenditures (Karprovich et al. 2009, Geiser 2013, Evans et al. 2016) thus likely resulting in Level B harassment.

Late Denning

The third denning period, late denning, begins when cubs are ≥60 days old and ends at den emergence in the spring, which coincides with increases in prey availability (Rode et al. 2018b). In the SBS, March 15th is the median estimated emergence date for land-denning bears (Rode et al. 2018b). During late denning, cubs develop the ability to travel more efficiently and become less susceptible to heat loss, which enhances their ability to survive after leaving the den (Rode et al. 2018b). For example, date of den emergence was identified as the most important variable influencing cub survival in a study of marked polar bears in the CS and SBS stocks (Rode et al. 2018b). The authors reported that all females that denned through the end of March had ≥ one cub when re-sighted ≤100 days after den emergence. Conversely, roughly half of the females that emerged from dens before the end of February did not have cubs when resighted ≤100 days after emergence, suggesting that later den emergence likely results in a greater likelihood of cub survival (Rode et al. 2018b). Rode et al. (2018b) do note several factors that could affect their findings; for example, it was not always known whether a female emerged from a den with cubs (*i.e.,* cubs died before re-sighting during the spring surveys).

Although the potential responses of bears to disturbance events (*e.g.,* emerging from dens early, abandoning dens, physiological changes) during early and late denning are the same, consequences to cubs differ based on their developmental progress. In contrast to emergences during early denning, which are likely to result in cub mortality, emergences during late denning do not necessarily result in cub mortality because cubs potentially can survive outside the den after reaching approximately 60 days of age. However, because survival increases with time spent in the den during late denning, disturbances that contribute to an early emergence during late denning are likely to increase the probability of cub mortality, thus leading to a serious injury Level A harassment. Similar to the early denning period, this form of disturbance would also likely lead to Level B harassment for adult females.

Post-Emergence

The post-emergence period begins at den emergence and ends when bears leave the den site and depart for the sea ice, which can occur up to 30 days after emergence (Harington 1968, Jonkel et al. 1972, Kolenoski and Prevett 1980, Hansson and Thomassen 1983, Ovsyanikov 1998, Robinson 2014). During the post-emergence period, bears spend time in and out of the den where they acclimate to surface conditions and engage in a variety of activities, including grooming, nursing, walking, playing, resting, standing, digging, and foraging on vegetation (Harington 1968; Jonkel et al. 1972; Hansson and Thomassen 1983; Ovsyanikov 1998; Smith et al. 2007, 2013). While mothers outside the den spend most of their time resting, cubs tend to be more active, which likely increases strength and locomotion (Harington 1968, Lentfer and Hensel 1980, Hansson and Thomassen 1983, Robinson 2014). Disturbances that elicit an early departure from the den site may hinder the ability of cubs to travel (Ovsyanikov 1998), thereby increasing the chances for cub abandonment (Haroldson et al. 2002) or susceptibility to predation (Derocher and Wiig 1999, Amstrup et al. 2006b).

Considerable variation exists in the duration of time that bears spend at dens post-emergence, and the relationship between the duration and cub survival has not been formally evaluated. However, a maternal female should be highly motivated to return to the sea ice to begin hunting and replenish her energy stores to support lactation, thus, time spent at the den site post emergence likely confers some fitness benefit to cubs. A disturbance that leads the family group to depart the den site early during this period therefore is likely to lead to a non-serious Level A harassment for the cubs and a Level B harassment for the adult female.

Walrus: Human-Walrus Encounters

Walruses do not inhabit the Beaufort Sea frequently and the likelihood of encountering walruses during Industry operations is low and limited to the open-water season. During the time period of this ITR, Industry operations may occasionally encounter small groups of walruses swimming in open water or hauled out onto ice floes or along the coast. Industry monitoring data have reported 38 walruses between 1995 and 2015, with only a few instances of disturbance to those walruses (AES Alaska 2015, USFWS unpublished data). From 2009 through 2014, no interactions between walrus and Industry were reported in the Beaufort Sea ITR region. We have no evidence of any physical effects or impacts to individual walruses due to Industry activity in the Beaufort Sea. However, in the Chukchi Sea, where walruses are more prevalent, Level B harassment is known to sometimes occur during encounters with Industry. Thus, if walruses are encountered during the activities proposed in this ITR, the interaction it could potentially result in disturbance.

Human encounters with walruses could occur during Industry activities,

although such encounters would be rare due to the limited distribution of walruses in the Beaufort Sea. These encounters may occur within certain cohorts of the population, such as calves or animals under stress. In 2004, a suspected orphaned calf hauled-out on the armor of Northstar Island numerous times over a 48-hour period, causing Industry to cease certain activities and alter work patterns before the walrus disappeared in stormy seas. Additionally, a walrus calf was observed for 15 minutes during an exploration program 60 ft from the dock at Cape Simpson in 2006. From 2009 through 2020, Industry reported no similar interactions with walruses.

In the nearshore areas of the Beaufort Sea, stationary offshore facilities could produce high levels of noise that have the potential to disturb walruses. These include Endicott, Hilcorp's Saltwater Treatment Plant (located on the West Dock Causeway), Oooguruk, and Northstar facilities. The Liberty project will also have this potential when it commences operations. From 2009 through 2020, there were no reports of walruses hauling out at Industry facilities in the Beaufort Sea ITR region. Previous observations have been reported of walruses hauled out on Northstar Island and swimming near the Saltwater Treatment Plant. In 2007, a female and a subadult walrus were observed hauled-out on the Endicott Causeway. The response of walruses to disturbance stimuli is highly variable. Anecdotal observations by walrus hunters and researchers suggest that males tend to be more tolerant of disturbances than females and individuals tend to be more tolerant than groups. Females with dependent calves are considered least tolerant of disturbances. In the Chukchi Sea, disturbance events are known to cause walrus groups to abandon land or ice haulouts and occasionally result in trampling injuries or cow-calf separations, both of which are potentially fatal. Calves and young animals at terrestrial haulouts are particularly vulnerable to trampling injuries. However, due to the scarcity of walrus haulouts in the ITR area, the most likely potential impacts of Industry activities include displacement from preferred foraging areas, increased stress, energy expenditure, interference with feeding, and masking of communications. Any impact of Industry presence on walruses is likely to be limited to a few individuals due to their geographic range and seasonal distribution.

The reaction of walruses to vessel traffic is dependent upon vessel type, distance, speed, and previous exposure to disturbances. Walruses in the water appear to be less readily disturbed by vessels than walruses hauled out on land or ice. Furthermore, barges and vessels associated with Industry activities travel in open water and avoid large ice floes or land where walruses are likely to be found. In addition, walruses can use a vessel as a haulout platform. In 2009, during Industry activities in the Chukchi Sea, an adult walrus was observed hauled out on the stern of a vessel.

Walrus: Effects of In-Water Activities

Walruses hear sounds both in air and in water. They have been shown to hear from 60 hertz (Hz) to 23 kilohertz (kHz) in air (Reichmuth et al. 2020). Tests of underwater hearing have shown their range to be between 1 kHz and 12 kHz with greatest sensitivity at 12 kHz (Kastelein et al. 2002). The underwater hearing abilities of the Pacific walrus have not been studied sufficiently to develop species-specific criteria for preventing harmful exposure. However, sound pressure level thresholds have been developed for members of the ''other carnivore'' group of marine mammals (Table 1).

When walruses are present, underwater noise from vessel traffic in the Beaufort Sea may prevent ordinary communication between individuals by preventing them from locating one another. It may also prevent walruses from using potential habitats in the Beaufort Sea and may have the potential to impede movement. Vessel traffic will likely increase if offshore Industry expands and may increase if warming waters and seasonally reduced sea-ice cover alter northern shipping lanes.

The most likely response of walruses to acoustic disturbances in open water will be for animals to move away from the source of the disturbance. Displacement from a preferred feeding area may reduce foraging success, increase stress levels, and increase energy expenditures.

Walrus: Effects of Aircraft Overflights

Aircraft overflights may disturb walruses. Reactions to aircraft vary with range, aircraft type, and flight pattern as well as walrus age, sex, and group size. Adult females, calves, and immature walruses tend to be more sensitive to aircraft disturbance. Walruses are particularly sensitive to changes in engine noise and are more likely to stampede when planes turn or fly low overhead. Researchers conducting aerial surveys for walruses in sea-ice habitats have observed little reaction to fixed-winged aircraft above 457 m (1,500 ft) (USFWS unpubl. data). Although the intensity of the reaction to noise is variable, walruses are probably most susceptible to disturbance by fast-moving and low-flying aircraft (100 m (328 ft) above ground level) or aircraft that change or alter speed or direction. In the Chukchi Sea, there are recent examples of walruses being disturbed by aircraft flying in the vicinity of haulouts. It appears that walruses are more sensitive to disturbance when hauled out on land versus sea-ice.

Effects to Prey Species

Industry activity has the potential to impact walrus prey, which are primarily benthic invertebrates including bivalves, snails, worms, and crustaceans (Sheffield and Grebmeier 2009). The effects of Industry activities on benthic invertebrates would most likely result from disturbance of seafloor substrate from activities such as dredging or screeding, and if oil was illegally discharged into the environment. Substrate-borne vibrations associated with vessel noise and Industry activities, such as pile driving and drilling, can trigger behavioral and physiological responses in bivalves and crustaceans (Roberts et al. 2016, Tidau and Briffa 2016). In the case of an oil spill, oil has the potential to impact benthic invertebrate species in a variety of ways including, but not limited to, mortality due to smothering or toxicity, perturbations in the composition of the benthic community, as well as altered metabolic and growth rates. Additionally, bivalves and crustaceans can bioaccumulate hydrocarbons, which could increase walrus exposure to these compounds (Engelhardt 1983). Disturbance from Industry activity and effects from oil exposure may alter the availability and distribution of benthic invertebrate species. An increasing number of studies are examining benthic invertebrate communities and food web structure within the Beaufort Sea (Rand and Logerwell 2011, Divine et al. 2015). The low likelihood of an oil spill large enough to affect walrus prey populations (see the section titled *Risk Assessment of Potential Effects Upon Polar Bears from a Large Oil Spill in the Beaufort Sea*) combined with the low density of walruses that feed on benthic invertebrates in this region during open-water season indicates that Industry activities will likely have limited effects on walruses through impacted prey species.

The effects of Industry activity upon polar bear prey, primarily ringed seals and bearded seals, will be similar to that of effects upon walruses and primarily through noise disturbance or exposure

to an oil spill. Seals respond to vessel noise and potentially other Industry activities. Some seals exhibited a flush response, entering water when previously hauled out on ice, when noticing an icebreaker vessel that ranged from 100 m to 800 m away from the seal (Lomac-MacNair et al. 2019). This disturbance response in addition to other behavioral responses could extend to other Industry vessels and activities, such as dredging (Todd et al. 2015). Sounds from Industry activity are probably audible to ringed seals and harbor seals at distances up to approximately 1.5 km in the water and approximately 5 km in the air (Blackwell et al. 2004). Disturbance from Industry activity may cause seals to avoid important habitat areas, such as pupping lairs or haulouts, and to abandon breathing holes near Industry activity. However, these disturbances appear to have minor, short-term, and temporary effects (NMFS 2013).

Consumption of oiled seals may impact polar bears through their exposure to oil spills during Industry activity (see *Evaluation of Effects on Oil Spills on Pacific Walruses and Polar Bears*). Ingestion of oiled seals would cause polar bears to ingest oil and inhale oil fumes, which can cause tissue and organ damage for polar bears (Engelhardt 1983). If polar bear fur were to become oiled during ingestion of oiled seals, this may lead to thermoregulation issues, increased metabolic activity, and further ingestion of oil during grooming (Engelhardt 1983). Ringed seals that have been exposed to oil or ingested oiled prey can accumulate hydrocarbons in their blubber and liver (Engelhardt 1983). These increased levels of hydrocarbons may affect polar bears even if seals are not oiled during ingestion. Polar bears could be impacted by reduced seal availability, displacement of seals in response to Industry activity, increased energy demands to hunt for displaced seals, and increased dependency on limited alternative prey sources, such as scavenging on bowhead whale carcasses harvested during subsistence hunts. If seal availability were to decrease, then the survival of polar bears may be drastically affected (Fahd et al. 2021). However, apart from a large-scale illegal oil spill, impacts from Industry activity on seals are anticipated to be minor and short-term, and these impacts are unlikely to substantially reduce the availability of seals as a prey source for polar bears. The risk of large-scale oil spills is discussed in Risk Assessment of Potential Effects upon Polar Bears from a Large Oil Spill in the Beaufort Sea.

Evaluation of Effects of Specified Activities on Pacific Walruses, Polar Bears, and Prey Species

Definitions of Incidental Take Under the Marine Mammal Protection Act

Below we provide definitions of three potential types of take of Pacific walruses or polar bears. The Service does not anticipate and is not authorizing lethal take or Level A harassment as a part of the rule; however, the definitions of these take types are provided for context and background.

Lethal Take

Human activity may result in biologically significant impacts to polar bears or Pacific walruses. In the most serious interactions, human actions can result in mortality of polar bears or Pacific walruses. We also note that, while not considered incidental, in situations where there is an imminent threat to human life, polar bears may be killed. Additionally, though not considered incidental, polar bears have been accidentally killed during efforts to deter polar bears from a work area for safety and from direct chemical exposure (81 FR 52276, August 5, 2016). Incidental lethal take could result from human activity such as a vehicle collision or collapse of a den if it were run over by a vehicle. Unintentional disturbance of a female by human activity during the denning season may cause the female either to abandon her den prematurely with cubs or abandon her cubs in the den before the cubs can survive on their own. Either scenario may result in the incidental lethal take of the cubs. Incidental lethal take of Pacific walrus could occur if the animal were directly struck by a vessel, or trampled by other walruses in a human-caused stampede.

Level A Harassment

Human activity may result in the injury of polar bears or Pacific walruses. Level A harassment, for nonmilitary readiness activities, is defined as any act of pursuit, torment, or annoyance that has the potential to injure a marine mammal or marine mammal stock in the wild. Take by Level A harassment can be caused by numerous actions such as creating an annoyance that separates mothers from dependent cub(s)/calves (Amstrup 2003), results in polar bear mothers leaving the den early (Amstrup and Gardner 1994, Rode et al. 2018b), or interrupts the nursing or resting of cubs/calves. For this ITR, we have also distinguished between non-serious and serious Level A harassment. Serious Level A harassment is defined here as an injury that is likely to result in mortality.

Level A harassment to bears on the surface is extremely rare within the ITR region. From 2012 through 2018, one instance of Level A harassment occurred within the ITR region associated with defense of human life while engaged in non-Industry activity. No Level A harassment to Pacific walruses has been reported in the Beaufort Sea ITR region. Given this information, the Service does not estimate Level A harassment to polar bears or Pacific walruses will result from the activities specified in AOGA's Request. Nor has Industry anticipated or requested authorization for such take in their Request for ITRs.

Level B Harassment

Level B Harassment for nonmilitary readiness activities means any act of pursuit, torment, or annoyance that has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behaviors or activities, including, but not limited to, migration, breathing, nursing, feeding, or sheltering. Changes in behavior that disrupt biologically significant behaviors or activities for the affected animal meet the criteria for take by Level B harassment under the MMPA. Reactions that indicate take by Level B harassment of polar bears in response to human activity include, but are not limited to, the following:

- Fleeing (running or swimming away from a human or a human activity);
- Displaying a stress-related behavior such as jaw or lip-popping, front leg stomping, vocalizations, circling, intense staring, or salivating;
- Abandoning or avoiding preferred movement corridors such as ice floes, leads, polynyas, a segment of coastline, or barrier islands;
- Using a longer or more difficult route of travel instead of the intended path;
- Interrupting breeding, sheltering, or feeding;
- Moving away at a fast pace (adult) and cubs struggling to keep up;
- Ceasing to nurse or rest (cubs);
- Ceasing to rest repeatedly or for a prolonged period (adults);
- Loss of hunting opportunity due to disturbance of prey; or
- Any interruption in normal denning behavior that does not cause injury, den abandonment, or early departure of the family group from the den site.

This list is not meant to encompass all possible behaviors; other behavioral responses may equate to take by Level B harassment. Relatively minor changes in behavior such as increased vigilance or a short-term change in direction of

travel are not likely to disrupt biologically important behavioral patterns, and the Service does not view such minor changes in behavior as resulting in a take by Level B harassment. It is also important to note that depending on the duration, frequency, or severity of the above-described behaviors, such responses could constitute take by Level A harassment (*e.g.,* repeatedly disrupting a polar bear versus a single interruption).

Evaluation of Take

The general approach for quantifying take in this ITR was as follows: (1) Determine the number of animals in the project area; (2) assess the likelihood, nature, and degree of exposure of these animals to project-relative activities; (3) evaluate these animals' probable responses; and (4) calculate how many of these responses constitute take. Our evaluation of take included quantifying the probability of either lethal take or Level A harassment (potential injury) and quantifying the number of responses that met the criteria for Level B harassment (potential disruption of a biologically significant behavioral pattern), factoring in the degree to which effective mitigation measures that may be applied will reduce the amount or consequences of take. To better account for differences in how various aspects of the project could impact polar bears, we performed separate take estimates for Surface-Level Impacts, Aircraft Activities, Impacts to Denning Bears, and Maritime Activities. These analyses are described in more detail in the subsections below. Once each of these categories of take were quantified, the next steps were to: (5) Determine whether the total take will be of a small number relative to the size of the species or stock; and (6) determine whether the total take will have a negligible impact on the species or stock, both of which are determinations required under the MMPA.

Pacific Walrus: All Interactions

With the low occurrence of walruses in the Beaufort Sea and the adoption of the mitigation measures required by this ITR, the Service concludes that the only anticipated effects from Industry noise in the Beaufort Sea would be short-term behavioral alterations of small numbers of walruses. All walrus encounters within the ITR geographic area in the past 10 years have been of solitary walruses or groups of two. The closest sighting of a grouping larger than two was outside the ITR area in 2013. The vessel encountered a group of 15 walrus. Thus, while it is highly unlikely that a group of walrus will be encountered during the proposed activities, we estimate that no more than one group of 15 Pacific walruses will be taken as a result of Level B harassment each year during the ITR period.

Polar Bear: Surface Interactions

Encounter Rate

The most comprehensive dataset of human–polar bear encounters along the coast of Alaska consists of records of Industry encounters during activities on the North Slope submitted to the Service under existing and previous ITRs. This database is referred to as the ''LOA database'' because it aggregates data reported by the oil and gas industry to the Service pursuant to the terms and conditions of LOAs issued under current and previous incidental take regulations (50 CFR part 18, subpart J). We have used records in the LOA database in the period 2014–2018, in conjunction with bear density projections for the entire coastline, to generate quantitative encounter rates in the project area. This 5-year period was used to provide metrics that reflected the most recent patterns of polar bear habitat use within the Beaufort Sea ITR region. Each encounter record includes the date and time of the encounter, a general description of the encounter, number of bears encountered, latitude and longitude, weather variables, and a take determination made by the Service. If latitude and longitude were not supplied in the initial report, we georeferenced the encounter using the location description and a map of North Slope infrastructure.

Spatially Partitioning the North Slope Into ''Coastal'' and ''Inland'' Zones

The vast majority of SBS polar bear encounters along the Alaskan coast occur along the shore or immediately offshore (Atwood et al. 2015, Wilson et al. 2017). Thus, encounter rates for inland operations should be significantly lower than those for offshore or coastal operations. To partition the North Slope into ''coastal'' and ''inland'' zones, we calculated the distance to shore for all encounter records in the period 2014–2018 in the Service's LOA database using a shapefile of the coastline and the *dist2Line* function found in the R geosphere package (Hijmans 2019). Linked sightings of the same bear(s) were removed from the analysis, and individual records were created for each bear encountered. However, because we were able to identify and remove only repeated sightings that were designated as linked within the database, it is likely that some repeated encounters of the same bear remained in our analysis. From 2014 through 2018, of the 1,713 bears encountered, 1,140 (66.5 percent) were offshore. While these bears were encountered offshore, the encounters were reported by onshore or island operations (*i.e.,* docks, drilling and production islands, or causeways). We examined the distribution of bears that were onshore and up to 10 km (6.2 mi) inland to determine the distance at which encounters sharply decreased (Figure 2).

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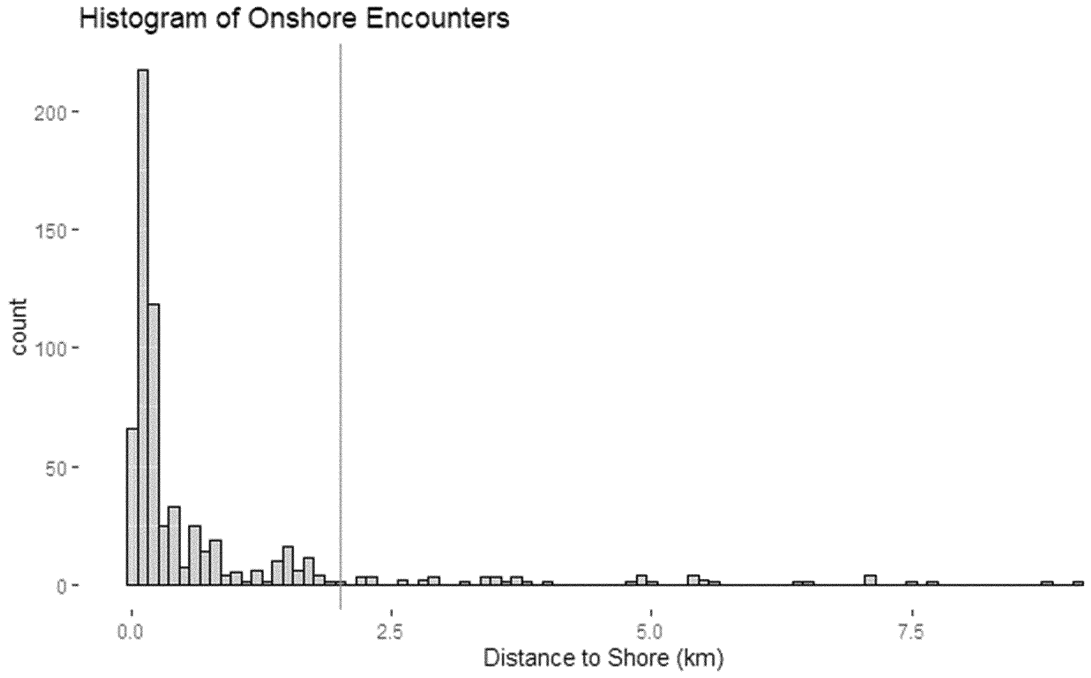

Figure 2—Distribution of onshore polar bear encounters on the North Slope of Alaska in the period 2014–2018 by distance to shore (km). The decrease in encounters was used to designate a "coastal" zone up to 2.0 km (1.2 mi) from shore and an "inland" zone greater than 2.0 km (1.2 mi) from shore.

The histogram illustrates a steep decline in human–polar bear encounters at 2 km (1.2 mi) from shore. Using this data, we divided the North Slope into the ''coastal zone,'' which includes offshore operations and up to 2 km (1.2 mi) inland, and the ''inland zone,'' which includes operations more than 2 km (1.2 mi) inland.

Dividing the Year Into Seasons

As we described in our review of polar bear biology above, the majority of polar bears spend the winter months on the sea ice, leading to few polar bear encounters on the shore during this season. Many of the proposed activities are also seasonal, and only occur either in the winter or summer months. In order to develop an accurate estimate of the number of polar bear encounters that may result from the proposed activities, we divided the year into seasons of high bear activity and low bear activity using the Service's LOA database. Below is a histogram of all bear encounters from 2014 through 2018 by day of the year (Julian date). Two clear seasons of polar bear encounters can be seen: an ''open-water season'' that begins in mid-July and ends in mid-November, and an ''ice season'' that begins in mid-November and ends in mid-July. The 200th and 315th days of the year were used to delineate these seasons when calculating encounter rates (Figure 3).

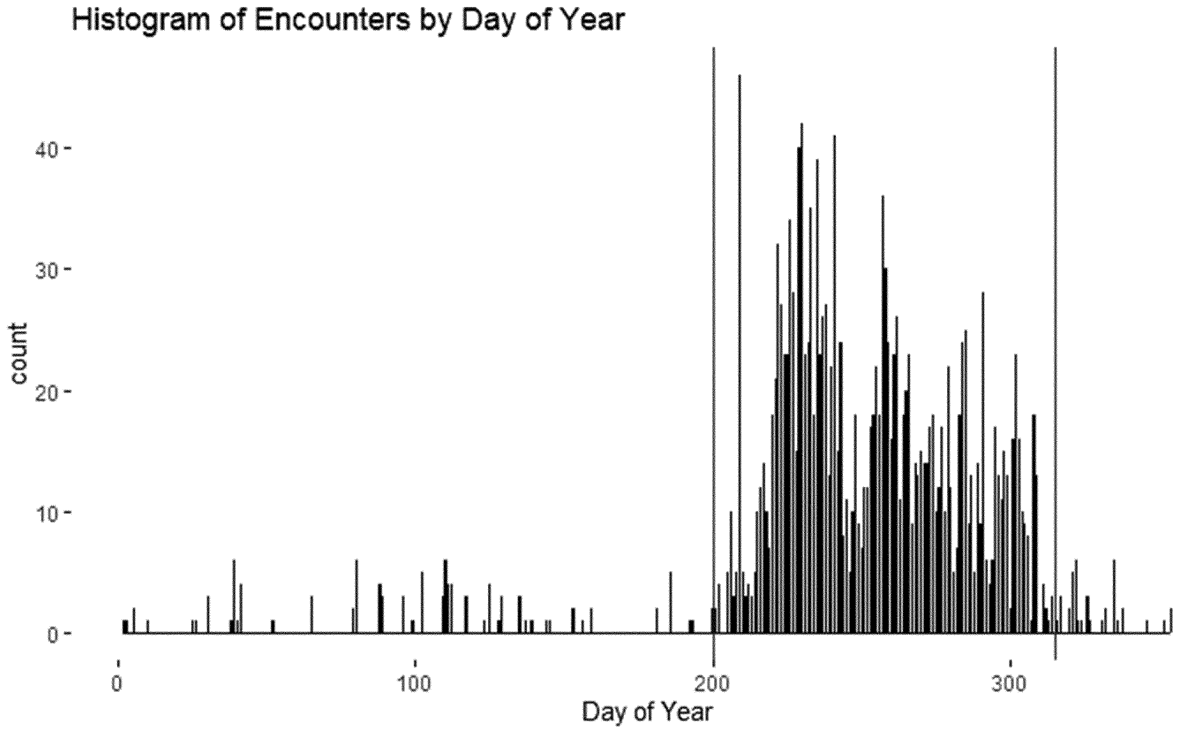

Figure 3—Distribution of polar bear encounters in the Southern Beaufort Sea and adjacent North Slope of Alaska in the period 2014–2018 by Julian day of year. Dotted lines delineate the "open" vs. "ice" seasons. Open season begins on the 200th day of the year (July 19th) and ends on the 315th day of the year (November 11th).

North Slope Encounter Rates

Encounter rates in bears/season/km² were calculated using a subset of the Industry encounter records maintained in the Service's LOA database. The following formula was used to calculate encounter rate (Equation 1):

$$\frac{Bears\ Encountered\ by\ Season}{Area\ Occupied\ (km^2)}$$

Equation 1

The subset consisted of encounters in areas that were constantly occupied year-round to prevent artificially inflating the denominator of the equation and negatively biasing the encounter rate. To identify constantly occupied North Slope locations, we gathered data from a number of sources. We used past LOA requests to find descriptions of projects that occurred anywhere within 2014–2018 and the final LOA reports to determine the projects that proceeded as planned and those that were never completed. Finally, we relied upon the institutional knowledge of our staff, who have worked with operators and inspected facilities on the North Slope. To determine the area around industrial facilities in which a polar bear can be seen and reported, we queried the Service LOA database for records that included the distance to an encountered polar bear. It is important to note that these values may represent the closest distance a bear came to the observer or the distance at initial contact. Therefore, in some cases, the bear may have been initially encountered farther than the distance recorded. The histogram of these values shows a drop in the distance at which a polar bear is encountered at roughly 1.6 km (1 mi) (Figure 4).

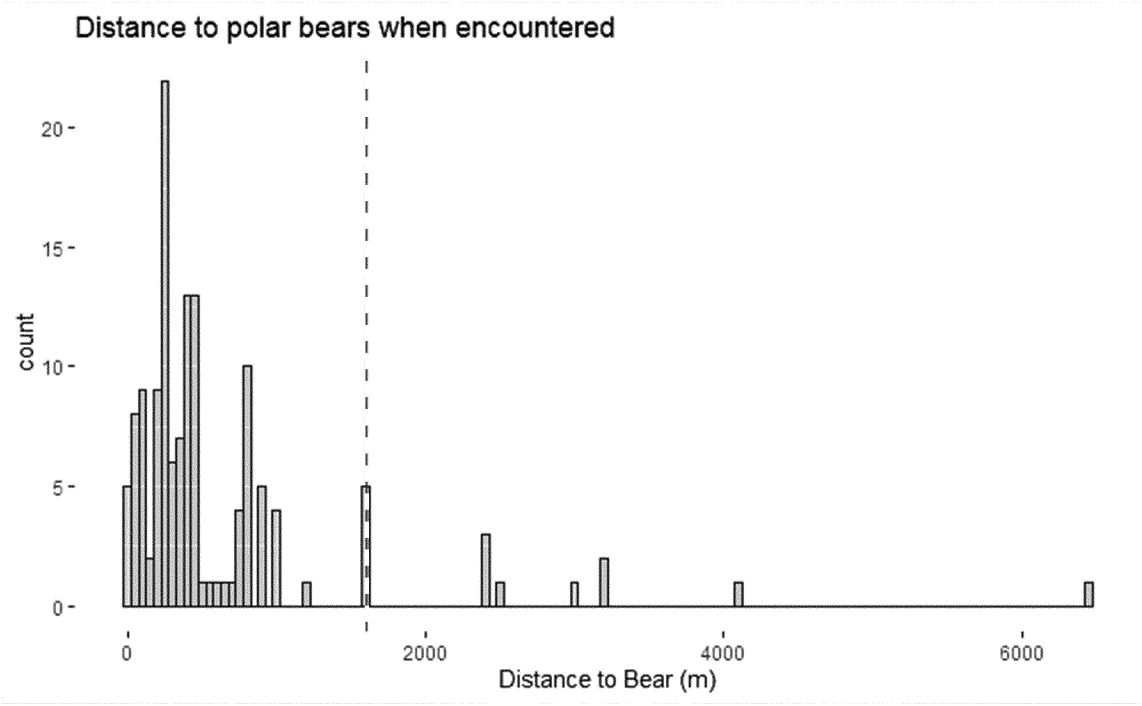

Figure 4—Distribution of polar bear encounters on the North Slope of Alaska in the period 2014–2018 by distance to bear (m).

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Using this information, we buffered the 24-hour occupancy locations listed above by 1.6 km (1 mi) and calculated an overall search area for both the coastal and inland zones. The coastal and inland occupancy buffer shapefiles were then used to select encounter records that were associated with 24-hour occupancy locations, resulting in the number of bears encountered per zone. These numbers were then separated into open-water and ice seasons (Table 2).

TABLE 2—SUMMARY OF ENCOUNTERS OF POLAR BEARS ON THE NORTH SLOPE OF ALASKA IN THE PERIOD 2014–2018 WITHIN 1.6 KM (1 MI) OF THE 24-HOUR OCCUPANCY LOCATIONS AND SUBSEQUENT ENCOUNTER RATES FOR COASTAL (A) AND INLAND (B) ZONES

Year	Ice season encounters	Open-water season encounters
(A) Coastal Zone (Area = 133 km²)		
2014	2	193
2015	8	49
2016	4	227
2017	7	313
2018	13	205
Average	6.8	197.4
Seasonal Encounter Rate	0.05 bears/km²	1.48 bears/km²
(B) Inland Zone (Area = 267 km²)		
2014	3	3
2015	0	0
2016	0	2
2017	3	0
2018	0	2
Average	1.2	1.4
Seasonal Encounter Rate	0.004 bears/km²	0.005 bears/km²

Harassment Rate

The Level B harassment rate or the probability that an encountered bear will experience either incidental or intentional Level B harassment, was calculated using the 2014–2018 dataset from the LOA database. A binary logistic regression of harassment regressed upon distance to shore was not significant ($p = 0.65$), supporting the use of a single harassment rate for both the coastal and inland zones. However, a binary logistic regression of harassment regressed upon day of the year was significant. This significance held when encounters were binned into either ice or open-water seasons ($p<0.0015$).

We subsequently estimated the harassment rate for each season with a Bayesian probit regression with season as a fixed effect (Hooten and Hefley 2019). Model parameters were estimated using 10,000 iterations of a Markov chain Monte Carlo algorithm composed of Gibbs updates implemented in R (R core team 2021, Hooten and Hefley 2019). We used Normal (0,1) priors, which are uninformative on the prior predictive scale (Hobbs and Hooten 2015), to generate the distribution of open-water and ice-season marginal posterior predictive probabilities of harassment. The upper 99 percent quantile of each probability distribution can be interpreted as the upper limit of the potential harassment rate supported by our dataset (*i.e.,* there is a 99 percent chance that given the data the harassment rate is lower than this value). We chose to use 99 percent quantiles of the probability distributions to account for any negative bias that has been introduced into the dataset through unobserved harassment or variability in the interpretation of polar bear behavioral reactions by multiple observers. The final harassment rates were 0.19 during the open-water season and 0.37 during the ice season (Figure 5).

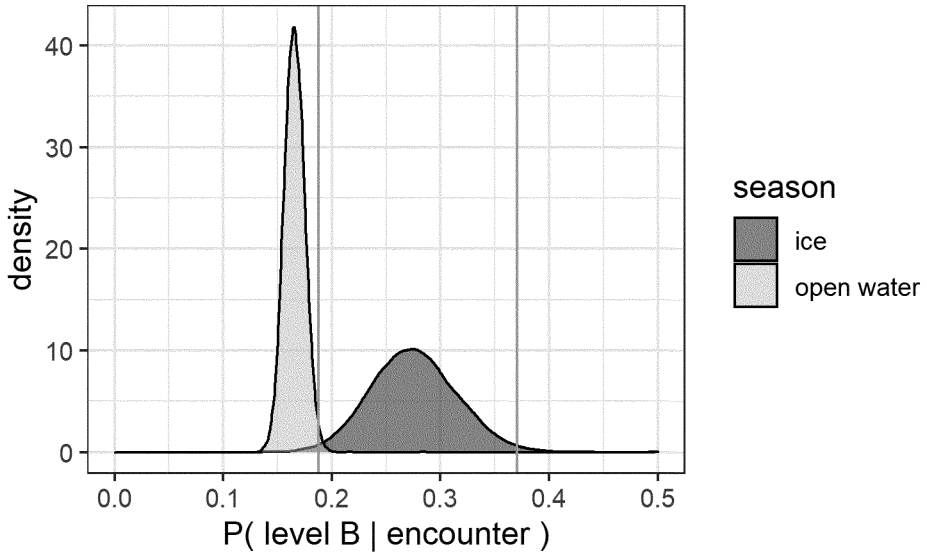

Figure 5—Estimated marginal posterior predictive probabilities from the Bayesian probit regression of Level B harassment of polar bears on the North Slope of Alaska in the period 2014–2018. Vertical grey lines correspond to the upper 99% quantiles for each distribution, which were used as the estimates of harassment rates.

Impact Area

As noted above, we have calculated encounter rates depending on the distance from shore and season and take rates depending on season. To properly assess the area of potential impact from the project activities, we must calculate the area affected by project activities to such a degree that harassment is possible. This is sometimes referred to as a zone or area of influence. Behavioral response rates of polar bears to disturbances are highly variable, and data to support the relationship between distance to bears and disturbance is limited. Dyck and Baydack (2004) found sex-based differences in the frequencies of vigilant bouts of polar bears in the presence of vehicles on the tundra. However, in their summary of polar bear behavioral response to ice-breaking vessels in the Chukchi Sea, Smultea et al. (2016) found no difference between reactions of males, females with cubs, or females without cubs. During the Service's coastal aerial surveys, 99 percent of polar bears that responded in a way that indicated possible Level B harassment (polar bears that were running when detected or began to run or swim in response to the aircraft) did so within 1.6 km (1 mi), as measured from the ninetieth percentile horizontal detection distance from the flight line. Similarly, Andersen and Aars (2008) found that female polar bears with cubs (the most conservative group observed) began to walk or run away from approaching snowmobiles at a mean distance of 1,534 m (0.95 mi). Thus, while future research into the reaction of polar bears to anthropogenic disturbance may indicate a different zone of potential impact is appropriate, the current literature supports the use of a 1.6 km (1.0 mi) impact area, as it will encompass the vast majority of polar bear harassment events.

Correction Factor

While the locations that were used to calculate encounter rates are thought to have constant human occupancy, it is possible that bears may be in the

vicinity of industrial infrastructure and not be noticed by humans. These unnoticed bears may also experience Level B harassment. To determine whether our calculated encounter rate should be corrected for unnoticed bears, we compared our encounter rates to Wilson et al.'s (2017) weekly average polar bear estimates along the northern coast of Alaska and the South Beaufort Sea.

Wilson et al.'s weekly average estimate of polar bears across the coast was informed by aerial surveys conducted by the Service in the period 2000–2014 and supplemented by daily counts of polar bears in three high-density barrier islands (Cross, Barter, and Cooper Islands). Using a Bayesian hierarchical model, the authors estimated 140 polar bears would be along the coastline each week between the months of August and October. These estimates were further partitioned into 10 equally sized grids along the coast. Grids 4–7 overlap the SBS ITR area, and all three encompass several industrial facilities. Grid 6 was estimated to account for 25 percent of the weekly bear estimate (35 bears); however, 25 percent of the bears in grid 6 were located on Cross Island. Grids 5 and 7 were estimated to contain seven bears each, weekly. Using raw aerial survey data, we calculated the number of bears per km of surveyed mainland and number of bears per km of surveyed barrier islands for each Service aerial survey from 2010 through 2014 to determine the proportion of bears on barrier islands versus the mainland. On average, 1.7 percent, 7.2 percent, and 14 percent of bears were sighted on the mainland in grids 5, 6, and 7, respectively.

While linked encounter records in the LOA database were removed in earlier formatting, it is possible that a single bear may be the focus of multiple encounter records, particularly if the bear moves between facilities operated by different entities. To minimize repeated sightings, we designated a single industrial infrastructure location in each grid: Oliktok Point in grid 5, West Beach in grid 6, and Point Thomson's CP in grid 7. These locations were determined in earlier analyses to have constant 24-occupancy; thus, if a polar bear were within the viewing area of these facilities, it must be reported as a condition of each entity's LOA.

Polygons of each facility were buffered by 1.6 km (1 mi) to account for the industrial viewing area (see above), and then clipped by a 400-m (0.25-mi) buffer around the shoreline to account for the area in which observers were able to reliably detect polar bears in the Service's aerial surveys (*i.e.,* the specific area to which the Wilson et al.'s model predictions applied). Industrial encounters within this area were used to generate the average weekly number of polar bears from August through October. Finally, we divided these numbers by area to generate average weekly bears/km^2 and multiplied this number by the total coastal Service aerial survey area. The results are summarized in the table below (Table 3).

TABLE 3—COMPARISON OF POLAR BEAR ENCOUNTERS TO NUMBER OF POLAR BEARS PROJECTED BY WILSON ET AL. 2017 AT DESIGNATED POINT LOCATIONS ON THE COAST OF THE NORTH SLOPE OF ALASKA

	Grid 5	Grid 6	Grid 7
Total coastline viewing area (km^2)	34	45	33.4
Industry viewing area (km^2)	0.31	0.49	1.0
Proportion of coastline area viewed by point location	0.009	0.011	0.030
Average number of bears encountered August–October at point location	3.2	4.6	28.8
Number of weeks in analysis	13	13	13
Average weekly number of bears *reported* at point location	0.246	0.354	2.215
Average weekly number of bears projected in grid*	7	26	7
Average weekly number of bears *projected* for point location	0.064	0.283	0.210

These comparisons show a greater number of industrial sightings than would be estimated by the Wilson et al. 2017 model. There are several potential explanations for higher industrial encounters than projected by model results. Polar bears may be attracted to industrial infrastructure, the encounters documented may be multiple sightings of the same bear, or specifically for the Point Thomson location, higher numbers of polar bears may be travelling past the pad to the Kaktovik whale carcass piles. However, because the number of polar bears estimated within the point locations is lower than the average number of industrial sightings, these findings cannot be used to create a correction factor for industrial encounter rate. To date, the data needed to create such a correction factor (*i.e.,* spatially explicit polar bear densities across the North Slope) have not been generated.

Estimated Harassment

We estimated Level B harassment using the spatio-temporally specific encounter rates and temporally specific take rates derived above in conjunction with AOGA supplied spatially and temporally specific data. Table 4 provides the definition for each variable used in the take formulas.

Table 4—Definitions of variables used in take estimates of polar bears on the coast of the North Slope of Alaska.

Variable	Definition
B_{es}	bears encountered in an area of interest for the entire season
a_c	coastal exposure area
a_i	inland exposure area
r_o	occupancy rate
e_{co}	coastal open-water season bear-encounter rate in bears/season
e_{ci}	coastal ice season bear-encounter rate in bears/season
e_{io}	inland open-water season bear-encounter rate in bears/season
e_{ii}	inland ice season bear-encounter rate in bears/season
t_i	ice season harassment rate
t_o	open-water season harassment rate
B_t	number of estimated Level B harassment events
B_T	total bears harassed for activity type

The variables defined above were used in a series of formulas to ultimately estimate the total harassment from surface-level interactions. Encounter rates were originally calculated as bears encountered per square kilometer per season (see *North Slope Encounter Rates* above). As a part of their Request, AOGA provided the Service with digital geospatial files that included the maximum expected human occupancy (*i.e.,* rate of occupancy (r_o)) for each individual structure (*e.g.,* each road, pipeline, well pad, etc.) of their proposed activities for each month of the ITR period. Months were averaged to create open-water and ice-season occupancy rates. For example, occupancy rates for July 2022, August 2022, September 2022, October 2022, and November 2022 were averaged to calculate the occupancy rate for a given structure during the open-water 2022 season. Using the buffer tool in ArcGIS, we created a spatial file of a 1.6-km (1-mi) buffer around all industrial structures. We binned the structures according to their seasonal occupancy rates by rounding them up into tenths (10 percent, 20 percent, etc.). We determined the impact area of each bin by first calculating the area within the buffers of 100 percent occupancy locations. We then removed the spatial footprint of the 100 percent occupancy buffers from the dataset and calculated the area within the 90 percent occupancy buffers. This iterative process continued until we calculated the area within all buffers. The areas of impact were then clipped by coastal and inland zone shapefiles to determine the coastal areas of impact (a_c) and inland areas of impact (a_i) for each activity category. We then used spatial files of the coastal and inland zones to determine the area in coastal verse inland zones for each occupancy percentage. This process was repeated for each season from open-water 2021 to open-water 2026.

Impact areas were multiplied by the appropriate encounter rate to obtain the number of bears expected to be encountered in an area of interest per season (B_{es}). The equation below (Equation 3) provides an example of the calculation of bears encountered in the ice season for an area of interest in the coastal zone.

$$B_{es} = a_c * e_{ci}$$

Equation 3

To generate the number of estimated Level B harassments for each area of interest, we multiplied the number of bears in the area of interest per season by the proportion of the season the area is occupied, the rate of occupancy, and the harassment rate (Equation 4).

$$B_t = B_{es} * S_p * r_o * t_i$$

Equation 4

The estimated harassment values for the open-water 2021 and open-water 2026 seasons were adjusted to account for incomplete seasons as the regulations will be effective for only 85 and 15 percent of the open-water 2021 and 2026 seasons, respectively.

Aircraft Impact to Surface Bears

Polar bears in the project area will likely be exposed to the visual and auditory stimulation associated with AOGA's fixed-wing and helicopter flight plans; however, these impacts are likely to be minimal and not long-lasting to surface bears. Flyovers may cause disruptions in the polar bear's normal behavioral patterns, thereby resulting in incidental Level B harassment. Sudden changes in direction, elevation, and movement may also increase the level of noise produced from the helicopter, especially at lower altitudes. This increased level of noise could disturb polar bears in the area to an extent that their behavioral patterns are disrupted and Level B harassment occurs. Mitigation measures, such as minimum flight altitudes over polar bears and restrictions on sudden changes to helicopter movements and direction, will be required to reduce the likelihood that polar bears are disturbed by aircraft. Once mitigated, such disturbances are expected to have no more than short-term, temporary, and minor impacts on individual bears.

Estimating Harassment Rates of Aircraft Activities

To predict how polar bears will respond to fixed-wing and helicopter overflights during North Slope oil and gas activities, we first examined existing data on the behavioral responses of polar bears during aircraft surveys conducted by the Service and U.S. Geological Survey (USGS) between August and October during most years from 2000 to 2014 (Wilson et al. 2017, Atwood et al. 2015, and Schliebe et al. 2008). Behavioral responses due to sight and sound of the aircraft have both been incorporated into this analysis as there was no ability to differentiate between the two response sources during aircraft survey observations. Aircraft types used for surveys during the study included a fixed-wing Aero-Commander from 2000 to 2004, a R–44 helicopter from 2012 to 2014, and an A-Star helicopter for a portion of the 2013 surveys. During surveys, all aircraft flew at an altitude of approximately 90 m (295 ft) and at a speed of 150 to 205 km per hour (km/h) or 93 to 127 mi per hour (mi/h). Reactions indicating possible incidental Level B harassment were recorded when a polar bear was observed running from the aircraft or began to run or swim in response to the aircraft. Of 951 polar bears observed during coastal aerial surveys, 162 showed these reactions, indicating that the percentage of Level B harassments during these low-altitude coastal survey flights was as high as 17 percent.

Detailed data on the behavioral responses of polar bears to the aircraft and the distance from the aircraft each polar bear was observed were available for only the flights conducted between 2000 to 2004 (n = 581 bears). The Aero-Commander 690 was used during this period. The horizontal detection distance from the flight line was recorded for all groups of bears detected. To determine if there was an effect of distance on the probability of a response indicative of potential Level B harassment, we modeled the binary behavioral response by groups of bears to the aircraft with Bayesian probit regression (Hooten and Hefley 2019). We restricted the data to those groups observed less than 10 km from the aircraft, which is the maximum distance at which behavioral responses were likely to be reliably recorded.

In nearly all cases when more than one bear was encountered, every member of the group exhibited the same response, so we treated the group as the sampling unit, yielding a sample size of 346 groups. Of those, 63 exhibited behavioral responses. Model parameters were estimated using 10,000 iterations of a Markov chain Monte Carlo algorithm composed of Gibbs updates implemented in R (R core team 2021, Hooten and Hefley 2019). Normal (0,1) priors, which are uninformative on the prior predictive scale (Hobbs and Hooten 2015), were placed on model parameters. Distance to bear as well as squared distance (to account for possible non-linear decay of probability with distance) were included as covariates. However, the 95 percent confidence intervals for the estimated coefficients overlapped zero suggesting no significant effect of distance on polar bears' behavioral responses. While it is likely that bears do respond differently to aircraft at different distances, the data available is heavily biased towards very short distances because the coastal surveys are designed to observe bears immediately along the coast. We were thus unable to detect any effect of distance. Therefore, to estimate a single rate of harassment, we fit an intercept-only model and used the distribution of the marginal posterior predictive probability to compute a point estimate.

Because the data from the coastal surveys were not systematically collected to study polar bear behavioral responses to aircraft, the data likely bias the probability of behavioral response low. We, therefore, chose the upper 99th percentile of the distribution as our point estimate of the probability of potential harassment. This equated to a harassment rate of 0.23. Because we were not able to detect an effect of distance, we could not correlate behavioral responses with profiles of sound pressure levels for the Aero-Commander (the aircraft used to collect the survey data). Therefore, we could also not use that relationship to extrapolate behavioral responses to sound profiles for takeoffs and landings nor sound profiles of other aircraft. Accordingly, we applied the single harassment rate to all portions of all aircraft flight paths.

General Approach to Estimating Harassment for Aircraft Activities

Aircraft information was determined using details provided in AOGA's Request, including flight paths, flight take-offs and landings, altitudes, and aircraft type. More information on the altitudes of future flights can be found in the Request. If no location or frequency information was provided, flight paths were approximated based on the information provided. Of the flight paths that were described clearly or were addressed through assumptions, we marked the approximate flight path start and stop points using ArcGIS Pro (version 2.4.3), and the paths were drawn. For flights traveling between two airstrips, the paths were reviewed and duplicated as closely as possible to the flight logs obtained from *www.FlightAware.com* (FlightAware), a website that maintains flight logs in the public domain. For flight paths where airstrip information was not available, a direct route was assumed. Activities such as pipeline inspections followed a route along the pipeline with the assumption the flight returned along the same route unless a more direct path was available.

Flight paths were broken up into segments for landing, take-off, and traveling to account for the length of time the aircraft may be impacting an area based on flight speed. The distance considered the ''landing'' area is based on approximately 4.83 km (3 mi) per 305 m (1,000 ft) of altitude descent speed. For all flight paths at or exceeding an altitude of 152.4 m (500 ft), the ''take-off'' area was marked as 2.41 km (1.5 mi) derived from flight logs found through FlightAware, which suggested that ascent to maximum flight altitude took approximately half the time of the average descent. The remainder of the flight path that

stretches between two air strips was considered the ''traveling'' area. We then applied the exposure area of 1,610 m (1 mi) along the flight paths. The data used to estimate the probability of Level B harassments due to aircraft (see section *Estimating Harassment Rates of Aircraft Activities*) suggested 99% of groups of bears were observed within 1.6 km of the aircraft.

We then differentiated the coastal and inland zones. The coastal zone was the area offshore and within 2 km (1.2 mi) of the coastline (see section *Spatially Partitioning the North Slope into ''coastal'' and ''inland'' zones*), and the inland zone was anything greater than 2 km (1.2 mi) from the coastline. We calculated the areas in square kilometers for the exposure area within the coastal zone and the inland zone for all take-offs, landings, and traveling areas. For flights that involve an inland and a coastal airstrip, we considered landings to occur at airstrips within the coastal zone. Seasonal encounter rates developed for both the coastal and inland zones (see section *Search Effort Buffer*) were applied to the appropriate segments of each flight path.

Surface encounter rates were calculated based on the number of bears per season (see section *Search Effort Buffer*). To apply these rates to aircraft activities, we needed to calculate a proportion of the season in which aircraft were flown. However, the assumption involved in using a seasonal proportion is that the area is impacted for an entire day (*i.e.,* for 24 hours). Therefore, to prevent estimating impacts along the flight path over periods of time where aircraft are not present, we calculated a proportion of the day the area will be impacted by aircraft activities for each season (Table 5).

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Table 5—Variable definitions and constant values used in polar bear harassment estimates for winter and summer aircraft activities on the coast of the North Slope of Alaska.

Variable	Definition	Value
d_s	days in each season	open-water season = 116, ice season = 249
S_p	proportion of the season an area of interest is impacted	varies by flight
f	flight frequency	varies by flight
$D_{p(LT)}$	proportion of the day landing/take-off areas are impacted by aircraft activities	varies by flight
t_{LT}	amount of time an aircraft is impacting landing/take-off areas within a day	10 minutes per flight
$D_{p(TR)}$	proportion of the day traveling areas are impacted by aircraft activities	varies by flight
t_{TR}	amount of time an aircraft is impacting traveling areas	1.5 minutes per 3.22 km [2 mi] segment per flight
x	number of 3.22-km (2-mi) segments within each traveling area	varies by flight
B_{es}	bears encountered in an area of interest for the entire season	varies by flight
B_i	bears impacted by aircraft activities	varies by flight
a_c	coastal exposure area	1,610 m (1 mi)
a_i	inland exposure area	1,610 m (1 mi)
e_{co}	coastal open-water season bear-encounter rate in bears/season	3.45 bears/km^2/season
e_{ci}	coastal ice season bear-encounter rate in bears/season	0.118 bears/km^2/season
e_{io}	inland open-water season bear-encounter rate in bears/season	0.0116 bears/km^2/season
e_{ii}	inland ice season bear-encounter rate in bears/season	0.0104 bears/km^2/season
t_a	aircraft harassment rate	0.23
B_t	number of estimated level B harassments	varies by flight

The number of times each flight path was flown (*i.e.,* flight frequency) was determined from the Request. We used the description combined with the approximate number of weeks and months within the open-water season and the ice season to determine the total number of flights per season for each year (f). We then used flight frequency and number of days per season (d_s) to calculate the seasonal proportion of flights (S_p; Equation 6).

$$S_p = \frac{f}{d_s}$$

Equation 6

After we determined the seasonal proportion of flights, we estimated the amount of time an aircraft would be impacting the landing/take-off areas within a day (t_{LT}). Assuming an aircraft is not landing at the same time another is taking off from the same airstrip, we estimated the amount of time an aircraft would be present within the landing or take-off zone would be t_{LT} = 10 minutes. We then calculated how many minutes within a day an aircraft would be impacting an area and divided by the number of minutes within a 24-hour period (1,440 minutes). This determined the proportion of the day in which a landing/take-off area is impacted by an aircraft for each season ($D_{p(LT)}$; Equation 7).

$$D_{p(LT)} = \frac{S_p * t_{LT}}{1440}$$

Equation 7

To estimate the amount of time an aircraft would be impacting the travel areas (t_{TR}, we calculated the minimum amount of time it would take for an aircraft to travel the maximum exposure area at any given time, 3.22 km (2.00 mi). We made this estimate using average aircraft speeds at altitudes less than 305 m (1,000 ft) to account for slower flights at lower altitudes, such as summer cleanup activities and determined it would take approximately 1.5 minutes. We then determined how many 3.22-km (2-mi) segments are present along each traveling path (x). We determined the total number of minutes an aircraft would be impacting any 3.22-km (2-mi) segment along the travel area in a day and divided by the number of minutes in a 24-hour period. This calculation determined the proportion of the day in which an aircraft would impact an area while traveling during each season ($D_{p(TR)}$; Equation 8).

$$D_{p(TR)} = \frac{S_p * (t_{TR} * x)}{1440}$$

Equation 8

We then used observations of behavioral reactions from aerial surveys (see section *Estimating Harassment Rates of Aircraft Activities*) to determine the appropriate harassment rate in the exposure area (1,610 m (1 mi) from the center of the flight line; see above in this section). The harassment rate areas were then calculated separately for the landing and take-off areas along each flight path as well as the traveling area for all flights with altitudes at or below 457.2 m (1,500 ft).

To estimate number of polar bears harassed due to aircraft activities, we first calculated the number of bears encountered (B_{es}) for the landing/take-off and traveling sections using both coastal ($e_{ci \text{ or } co}$) and inland ($e_{ii \text{ or } io}$) encounter rates within the coastal (a_c) and inland (a_i) exposure areas (Equation 9).

$$B_{es} = (e_{ci \text{ or } co} * a_c) + (e_{ii \text{ or } io} * a_i)$$

Equation 9

Using the calculated number of coastal and inland bears encountered for each season, we applied the daily seasonal proportion for both landings/take-offs and traveling areas to determine the daily number of bears impacted due to aircraft activities (B_i). We then applied the aircraft harassment rate (t_a) associated with the exposure area (see section *Estimating Harassment Rates of Aircraft Activities*), resulting in a number of bears harassed during each season (B_t; Equation 10). Harassment associated with AIR surveys was analyzed separately.

$$B_t = B_i * t_a$$

Equation 10

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Analysis Approach for Estimating Harassment During Aerial Infrared Surveys

Typically, during every ice season Industry conducts polar bear den surveys using AIR. Although the target for these surveys is polar bear dens, bears on the surface can be impacted by the overflights. These surveys are not conducted along specific flight paths and generally overlap previously flown areas within the same trip. Therefore, the harassment estimates for surface bears during AIR surveys were estimated using a different methodology.

Rather than estimate potential flight paths, we used the maximum amount of flight time that is likely to occur for AIR surveys during each year. The period of AIR surveys lasts November 25th to January 15th (52 days), and we estimated a maximum of 6 hours of flight time per day, resulting in a total of 312 flight hours per year. To determine the amount of time AIR flights are likely to survey coastal and inland zones, we found the area where industry activities and denning habitat overlap and buffered by 1.6 km (1 mi). We then split the buffered denning habitat by zone and determined the proportion of coastal and inland denning habitat. Using this proportion, we estimated the number of flight hours spent within each zone and determined the proportion of the ice season in which AIR surveys were impacting the survey areas (see *General Approach to Estimating Harassment for Aircraft Activities*). We then estimated the aircraft footprint to determine the area that would be impacted at any given time as well as the area accounting for two take-offs and two landings. Using the seasonal bear encounter rates for the appropriate zones multiplied by the area impacted and the proportion of the season AIR flights were flown, we determined the number of bears encountered. We then applied the aircraft harassment rate to the number of bears encountered per zone to determine number of bears harassed.

Estimated Harassment From Aircraft Activities

Using the approach described in *General Approach to Estimating Harassment for Aircraft Activities* and *Analysis Approach for Estimating Harassment during Aerial Infrared Surveys,* we estimated the total number of bears expected to be harassed by the aircraft activities included in the analyses during the Beaufort Sea ITR period of 2021–2026 (Table 6).

TABLE 6—ESTIMATED LEVEL B HARASSMENT OF POLAR BEARS ON THE NORTH SLOPE OF ALASKA BY YEAR AS A RESULT OF AIRCRAFT OPERATIONS DURING THE 2021–2026 ITR PERIOD

[Average estimated polar bear harassments per year = 1.09 bears]

	21–22	22–23	23–24	24–25	25–26	26	Total
Est. Harassment	0.89	0.95	0.95	1.09	1.09	0.15	5.45

Methods for Modeling the Effects of Den Disturbance

Case Studies Analysis

To assess the likelihood and degree of exposure and predict probable responses of denning polar bears to activities proposed in the AOGA Request, we characterized, evaluated, and prioritized a series of rules and definitions towards a predictive model based on knowledge of published and unpublished information on denning ecology, behavior, and cub survival. Contributing information came from literature searches in several major research databases and data compiled from polar bear observations submitted by the oil and gas Industry. We considered all available scientific and observational data we could find on polar bear denning behavior and effects of disturbance.

From these sources, we identified 57 case studies representing instances where polar bears at a maternal den may have been exposed to human activities. For each den, we considered the four denning periods separately, and for each period, determined whether adequate information existed to document whether (1) the human activity met our definition of an exposure and (2) the response of the bear(s) could be classified according to our rules and definitions. From these 57 dens, 80 denning period-specific events met these criteria. For each event, we classified the type and frequency (*i.e.,* discrete or repeated) of the exposure, the response of the bear(s), and the level of take associated with that response. From this information, we calculated the probability that a discrete or repeated exposure would result in each possible level of take during each denning period, which informed the probabilities for outcomes in the simulation model (Table 7).

TABLE 7—PROBABILITY THAT A DISCRETE OR REPEATED EXPOSURE ELICITED A RESPONSE BY DENNING POLAR BEARS THAT WOULD RESULT IN LEVEL B HARASSMENT, LEVEL A HARASSMENT (INCLUDING SERIOUS AND NON-SERIOUS INJURY), OR LETHAL TAKE

[Level B harassment was applicable to both adults and cubs, if present; Level A harassment and lethal take were applicable to cubs only. Probabilities were calculated from the analysis of 57 case studies of polar bear responses to human activity. Cells with NAs indicate these types of take were not possible during the given denning period.]

Exposure type	Period	None	Level B	Non-serious Level A	Serious Level A	Lethal
Discrete	Den Establishment	0.400	0.600	*NA*	*NA*	*NA*
	Early Denning	1.000	0.000	*NA*	*NA*	0.000
	Late Denning	0.091	0.000	*NA*	0.909	0.000
	Post-emergence	0.000	0.000	0.750	*NA*	0.250
Repeated	Den Establishment	1.000	0.000	*NA*	*NA*	*NA*
	Early Denning	0.800	0.000	*NA*	*NA*	0.200
	Late Denning	0.708	0.000	*NA*	0.292	0.000
	Post-emergence	0.000	0.267	0.733	*NA*	0.000

Case Study Analysis Definitions

Below, we provide definitions for terms used in this analysis, a general overview of denning chronology and periods (details are provided in the Potential Effects to Pacific Walrus, Polar Bears and Prey Species: *Effects on denning bears*), and the rules established for using the case studies to inform the model.

Exposure and Response Definitions

Exposure: Any human activity within 1.6 km (1 mi) of a polar bear den site. In the case of aircraft, an overflight within 457 m (0.3 mi) above ground level.

Discrete exposure: An exposure that occurs only once and of short duration (<30 minutes). It can also be a short-duration exposure that happens repeatedly but that is separated by sufficient time that exposures can be treated as independent (*e.g.,* aerial pipeline surveys that occur weekly).

Repeated exposure: An exposure that occurs more than once within a time period where exposures cannot be considered independent or an exposure that occurs due to continuous activity during a period of time (*e.g.,* traffic along a road, or daily visits to a well pad).

Response probability: The probability that an exposure resulted in a response by denning polar bears.

We categorized each exposure into categories based on polar bear response:

- *No response:* No observed or presumed behavioral or physiological response to an exposure.
- *Likely physiological response:* An alteration in the normal physiological function of a polar bear (*e.g.,* elevated heart rate or stress hormone levels) that is typically unobservable but is likely to occur in response to an exposure.
- *Behavioral response:* A change in behavior in response to an exposure. Behavioral responses can range from biologically insignificant (*e.g.,* a resting bear raising its head in response to a vehicle driving along a road) to substantial (*e.g.,* cub abandonment) and concomitant levels of take vary accordingly.

Timing Definitions

Entrance date: The date a female first enters a maternal den after excavation is complete.

Emergence date: The date a maternal den is first opened and a bear is exposed directly to external conditions. Although a bear may exit the den completely at emergence, we considered even partial-body exits (*e.g.,* only a bear's head protruding above the surface of the snow) to represent emergence in order to maintain consistency with dates derived from temperature sensors on collared bears (*e.g.,* Rode et al. 2018b). For dens located near regularly occurring human activity, we considered the first day a bear was observed near a den to be the emergence date unless other data were available to inform emergence dates (*e.g.,* GPS collar data).

Departure date: The date when bears leave the den site to return to the sea ice. If a bear leaves the den site after a disturbance but later returns, we considered the initial movement to be the departure date.

Definition of Various Denning Periods

Den establishment period: Period of time between the start of maternal den excavation and the birth of cubs. Unless evidence indicates otherwise, all dens that are excavated by adult females in the fall or winter are presumed to be maternal dens. In the absence of other information, this period is defined as denning activity prior to December 1 (*i.e.,* estimated earliest date cubs are likely present in dens (Derocher et al. 1992, Van de Velde et al. 2003)).

Early denning period: Period of time from the birth of cubs until they reach 60 days of age and are capable of surviving outside the den. In the absence of other information, this period is defined as any denning activity occurring between December 1 and February 13 (*i.e.,* 60 days after 15 December, the estimated average date of cub birth; Van de Velde et al. 2003, Messier et al. 1994).

Late denning period: Period of time between when cubs reach 60 days of age and den emergence. In the absence of other information, this period is defined as any denning activity occurring between 14 February and den emergence.

Post-emergence period: Period of time between den emergence and den site departure. We considered a ''normal'' duration at the den site between emergence and departure to be greater than or equal to 8 days and classified departures that occurred post emergence ''early'' if they occurred less than 8 days after emergence.

Descriptions of Potential Outcomes

Cub abandonment: Occurs when a female leaves all or part of her litter, either in the den or on the surface, at any stage of the denning process. We classified events where a female left her cubs but later returned (or was returned by humans) as cub abandonment.

Early emergence: Den emergence that occurs as the result of an exposure (see 'Rules' below).

Early departure: Departure from the den site post-emergence that occurs as the result of an exposure (see 'Rules' below).

Predictive Model Rules for Determining Den Outcomes and Assigning Take

- We considered any exposure in a 24-hour period that did not result in a Level A harassment or lethal take to potentially be a Level B harassment take

if a behavioral response was observed. However, multiple exposures do not result in multiple Level B harassment takes unless the exposures occurred in two different denning periods.

- If comprehensive dates of specific exposures are not available and daily exposures were possible (*e.g.,* the den was located within 1.6 km [1 mi] of an ice road), we assumed exposures occurred daily.
- In the event of an exposure that resulted in a disturbance to denning bears, take was assigned for each bear (*i.e.,* female and each cub) associated with that den. Whereas assigned take for cubs could range from Level B harassment to lethal take, for adult females only Level B harassment was possible.
- In the absence of additional information, we assumed dens did not contain cubs prior to December 1 but did contain cubs on or after December 1.
- If an exposure occurred and the adult female subsequently abandoned her cubs, we assigned a lethal take for each cub.
- If an exposure occurred during the early denning period and bears emerged from the den before cubs reached 60 days of age, we assigned a lethal take for each cub. In the absence of information about cub age, a den emergence that occurred between December 1 and February 13 was considered to be an early emergence and resulted in a lethal take of each cub.
- If an exposure occurred during the late denning period (*i.e.,* after cubs reached 60 days of age) and bears emerged from the den before their intended (*i.e.,* undisturbed) emergence date, we assigned a serious injury Level A harassment take for each cub. In the absence of information about cub age and intended emergence date (which was known only for simulated dens), den emergences that occurred between (and including) February 14 and March 14 were considered to be early emergences and resulted in a serious injury Level A harassment take of each cub. If a den emergence occurred after March 14 but was clearly linked to an exposure (*e.g.,* bear observed emerging from the den when activity initiated near the den), we considered the emergence to be early and resulted in a serious injury Level A harassment take of each cub.
- For dens where emergence was not classified as early, if an exposure occurred during the post-emergence period and bears departed the den site prior to their intended (*i.e.,* undisturbed) departure date, we assigned a non-serious injury Level A harassment take for each cub. In the absence of information about the intended departure date (which was known only for simulated dens), den site departures that occurred less than 8 days after the emergence date were considered to be early departures and resulted in a non-serious injury Level A harassment take of each cub.

Den Simulation

We simulated dens across the entire north slope of Alaska, ranging from the areas identified as denning habitat (Blank 2013, Durner et al. 2006, 2013) contained within the National Petroleum Reserve—Alaska (NPRA) in the west to the Canadian border in the east. While AOGA's Request does not include activity inside ANWR, we still simulated dens in that area to ensure that any activities directly adjacent to the refuge that might impact denning bears inside the refuge would be captured. To simulate dens on the landscape, we relied on the estimated number of dens in three different regions of northern Alaska provided by Atwood et al. (2020). These included the NPRA, the area between the Colville and Canning Rivers (CC), and ANWR. The mean estimated number of dens in each region during a given winter were as follows: 12 dens (*95% CI:* 3–26) in the NPRA, 26 dens (*95% CI:* 11–48) in the CC region, and 14 dens (*95% CI:* 5–30) in ANWR (Atwood et al. 2020). For each iteration of the model (described below), we drew a random sample from a gamma distribution for each of the regions based on the above parameter estimates, which allowed uncertainty in the number of dens in each area to be propagated through the modeling process. Specifically, we used the method of moments (Hobbs and Hooten 2015) to develop the shape and rate parameters for the gamma distributions as follows: NPRA ($12^2/5.8^2$,$12/5.8^2$), CC ($26^2/9.5^2$,$26/9.5^2$), and ANWR ($14^2/6.3^2$,$14/6.3^2$).

Because not all areas in northern Alaska are equally used for denning and some areas do not contain the requisite topographic attributes required for sufficient snow accumulation for den excavation, we did not randomly place dens on the landscape. Instead, we followed a similar approach to that used by Wilson and Durner (2020) with some additional modifications to account for differences in denning ecology in the CC region related to a preference to den on barrier islands and a general (but not complete) avoidance of actively used industrial infrastructure. Using the USGS polar bear den catalogue (Durner et al. 2020), we identified polar bear dens that occurred on land in the CC region and that were identified either by GPS-collared bears or through systematic surveys for denning bears (Durner et al. 2020). This resulted in a sample of 37 dens of which 22 (*i.e.,* 60 percent) occurred on barrier islands. For each iteration of the model, we then determined how many of the estimated dens in the CC region occurred on barrier islands versus the mainland.

To accomplish this, we first took a random sample from a binomial distribution to determine the expected number of dens from the den catalog (Durner et al. 2020) that should occur on barrier islands in the CC region during that given model iteration; $n_{barrier}$ = Binomial(37,22/37), where 37 represents the total number of dens in the den catalogue (Durner et al. 2020) in the CC region suitable for use (as described above) and 22/37 represents the observed proportion of dens in the CC region that occurred on barrier islands. We then divided $n_{barrier}$ by the total number of dens in the CC region suitable for use (*i.e.,* 37) to determine the proportion of dens in the CC region that should occur on barrier islands (*i.e.,* $p_{barrier}$). We then multiplied $p_{barrier}$ with the simulated number of dens in the CC region (rounded to the nearest whole number) to determine how many dens were simulated to occur on barriers islands in the region.

In the NPRA, the den catalogue (Durner et al. 2020) data indicated that two dens occurred outside of defined denning habitat (Durner et al. 2013), so we took a similar approach as with the barrier islands to estimate how many dens occur in areas of the NPRA with the den habitat layer during each iteration of the model; $n_{habitat} \sim$ Binomial(15, 13/15), where 15 represents the total number of dens in NPRA from the den catalogue (Durner et al. 2020) suitable for use (as described above), and 13/15 represents the observed proportion of dens in NPRA that occurred in the region with den habitat coverage (Durner et al. 2013). We then divided $n_{habitat}$ by the total number of dens in NPRA from the den catalogue (*i.e.,* 15) to determine proportion of dens in the NPRA region that occurred in the region of the den habitat layer ($p_{habitat}$). We then multiplied $p_{habitat}$ with the simulated number of dens in NPRA (rounded to the nearest whole number) to determine the number of dens in NPRA that occurred in the region with the den habitat layer. Because no infrastructure exists and no activities are proposed to occur in the area of NPRA without the den habitat layer, we only considered the potential impacts of activity to those dens simulated to occur

in the region with denning habitat identified (Durner et al. 2013).

To account for the potential influence of industrial activities and infrastructure on the distribution of polar bear selection of den sites, we again relied on the subset of dens from the den catalogue (Durner et al. 2020) discussed above. We further restricted the dens to only those occurring on the mainland because no permanent infrastructure occurred on barrier islands with identified denning habitat (Durner et al. 2006). We then determined the minimum distance to permanent infrastructure that was present when the den was identified. This led to an estimate of a mean minimum distance of dens to infrastructure being 21.59 km (SD = 16.82). From these values, we then parameterized a gamma distribution: Gamma($21.59^2/16.82^2$, $21.59/16.82^2$). We then obtained 100,000 samples from this distribution and created a discretized distribution of distances between dens and infrastructure. We created 2.5-km intervals between 0 and 45 km, and one bin for areas >45 km from infrastructure and determined the number of samples that occurred within each distance bin. We then divided the number of samples in each bin by the total number of samples to determine the probability of a simulated den occurring in a given distance bin. The choice of 2.5 km for distance bins was based on a need to ensure that kernel density grid cells occurred in each distance bin.

To inform where dens are most likely to occur on the landscape, we developed a kernel density map by using known den locations in northern Alaska identified either by GPS-collared bears or through systematic surveys for denning bears (Durner et al. 2020). To approximate the distribution of dens, we used an adaptive kernel density estimator (Terrell and Scott 1992) applied to *n* observed den location, which took the form

$$f(\mathbf{s}) \propto \frac{\theta}{n}\sum_{i}^{n} k\left(\frac{\mathbf{s}-\boldsymbol{s}_i}{h(\mathbf{s})}\right),$$

where the adaptive bandwidth $h(\boldsymbol{s}) = (\beta_0 + \beta_1 I(\boldsymbol{s}_i \in M) I(\boldsymbol{s} \in M))\beta_2$ for the location of the *i*th den and each location $\boldsymbol{s}$ in the study area. The indicator functions allowed the bandwidth to vary abruptly between the mainland *M* and barrier islands. The kernel *k* was the Gaussian kernel, and the parameters θ, β_0, β_1, β_2 were chosen based on visual assessment so that the density estimate approximated the observed density of dens and our understanding of likely den locations in areas with low sampling effort.

The kernel density map we used for this analysis differs slightly from the version used in previous analyses, specifically our differentiation of barrier islands from mainland habitat. We used this modified version because previous analyses did not require us to consider denning habitat in the CC region, which has a significant amount of denning that occurs on barrier islands compared to the other two regions. If barrier islands were not differentiated for the kernel density estimate, density from the barrier island dens would spill over onto the mainland, which was deemed to be biologically unrealistic given the clear differences in den density between the barrier islands and the mainland in the region. For each grid cell in the kernel density map within the CC region, we then determined the minimum distance to roads and pads that had occupancy ≥0.50 identified by AOGA during October through December (*i.e.,* the core period when bears were establishing their dens). We restricted the distance to infrastructure component to only the CC region because it is the region that contains the vast majority of oil and gas infrastructure and has had some form of permanent industrial infrastructure present for more than 50 years. Thus, denning polar bears have had a substantial amount of time to modify their selection of where to den related to the presence of human activity.

To simulate dens on the landscape, we first sampled in which kernel grid cell a den would occur based on the underlying relative probability (Figure 6) within a given region using a multinomial distribution. Once a cell was selected, the simulated den was randomly placed on the denning habitat (Blank 2013, Durner et al. 2006, 2013) located within that grid cell. For dens being simulated on mainland in the CC region, an additional step was required. We first assigned a simulated den a distance bin using a multinomial distribution of probabilities of being located in a given distance bin based on the discretized distribution of distances described above. Based on the distance to infrastructure bin assigned to a simulated den, we subset the kernel density grid cells that occurred in the same distance bin and then selected a grid cell from that subset based on their underlying probabilities using a multinomial distribution. Then, similar to other locations, a den was randomly placed on denning habitat within that grid cell.

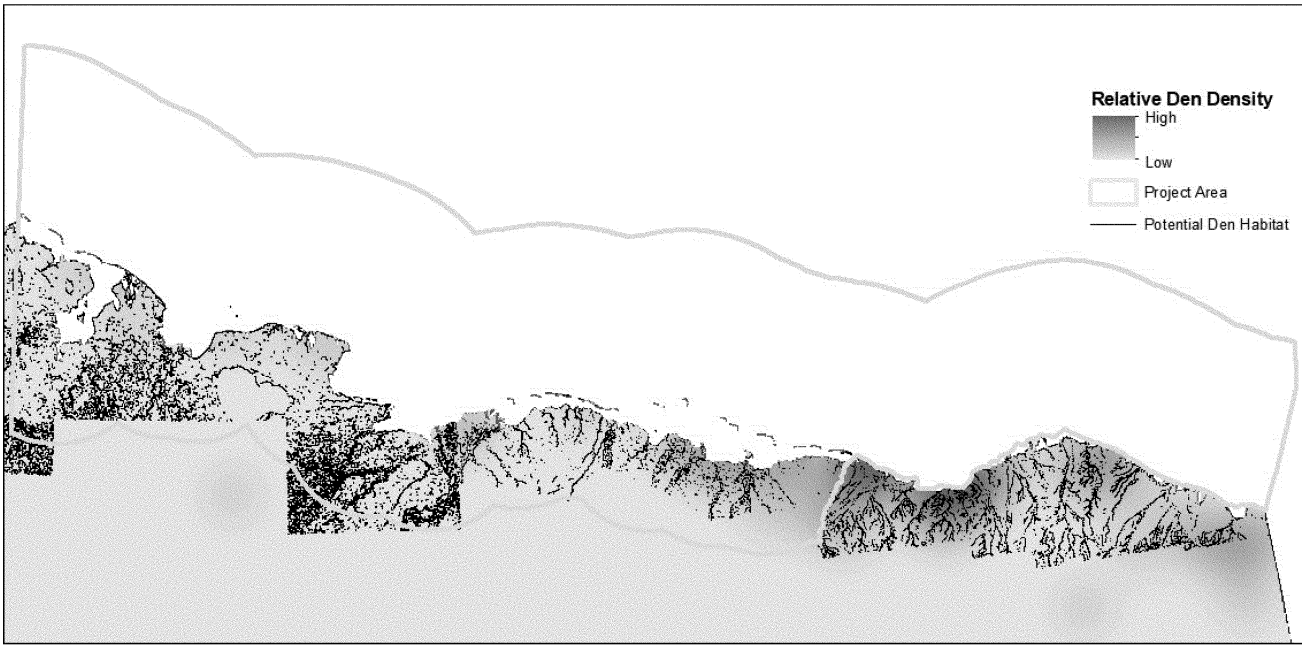

Figure 6—Depiction of the proposed project area with the underlying relative density of polar bear dens and potential polar bear den habitat as identified by Durner et al. (2006, 2013) and Blank (2013).

For each simulated den, we assigned dates of key denning events; den entrance, birth of cubs, when cubs reached 60 days of age, den emergence, and departure from the den site after emergence. These represent the chronology of each den under undisturbed conditions. We selected the entrance date for each den from a normal distribution parameterized by entrance dates of radio-collared bears in the Southern Beaufort subpopulation that denned on land included in Rode et al. (2018) and published in USGS (2018; n = 52, mean = 11 November, SD = 18 days). These data were restricted to those dens with both an entrance and emergence data identified and where a bear was in the den for greater than or equal to 60 days to reduce the chances of including non-maternal bears using shelter dens. Sixty days represents the minimum age of cubs before they have a chance of survival outside of the den. Thus, periods less than 60 days in the den have a higher chance of being shelter dens.

We truncated this distribution to ensure that all simulated dates occurred within the range of observed values (*i.e.,* 12 September to 22 December) identified in USGS (2018) to ensure that entrance dates were not simulated during biologically unreasonable periods given that the normal distribution allows some probability (albeit small) of dates being substantially outside a biologically reasonable range. We selected a date of birth for each litter from a normal distribution with the mean set to ordinal date 348 (*i.e.,* 15 December) and standard deviation of 10, which allowed the 95 percent CI to approximate the range of birth dates (*i.e.,* December 1 to January 15) identified in the peer-reviewed literature (Messier et al. 1994, Van de Velde et al. 2003). We ensured that simulated birth dates occurred after simulated den entrance dates. We selected the emergence date as a random draw from an asymmetric Laplace distribution with parameters $\mu = 81.0$, $\sigma = 4.79$, and $p = 0.79$ estimated from the empirical emergence dates in Rode *et al.* (2018) and published in USGS (2018, n = 52) of radio-collared bears in the Southern Beaufort Sea stock that denned on land using the mleALD function from package 'ald' (Galarzar and Lachos 2018) in program R (R Core Development Team 2021). We constrained simulated emergence dates to occur within the range of observed emergence dates (January 9 to April 9, again to constrain dates to be biologically realistic) and to not occur until after cubs were 60 days old. Finally, we assigned the number of days each family group spent at the den site post-emergence based on values reported in four behavioral studies, Smith et al. (2007, 2010, 2013) and Robinson (2014), which monitored dens near immediately after emergence (n = 25 dens). Specifically, we used the mean (8.0) and SD (5.5) of the dens monitored in these studies to parameterize a gamma distribution using the method of moments (Hobbs and Hooten 2015) with a shape parameter equal to $8.0^2/5.5^2$ and a rate parameter equal to $8.0/5.5^2$; we selected a post-emergence, pre-departure time for each den from this distribution. We restricted time at the den post emergence to occur within the range of times observed in Smith et al. (2007, 2010, 2013) and Robinson (2014) (*i.e.,* 2–23 days, again to ensure biologically realistic times spent at the den site were simulated). Additionally, we assigned each den a litter size by drawing the number of cubs from a multinomial distribution with probabilities derived from litter sizes (n = 25 litters) reported in Smith et al. (2007, 2010, 2013) and Robinson (2014).

Because there is some probability that a female naturally emerges with 0 cubs, we also wanted to ensure this scenario was captured. It is difficult to parameterize the probability of litter size equal to 0 because it is rarely observed. We, therefore, assumed that dens in the USGS (2018) dataset that had denning durations less than the shortest den duration where a female

was later observed with cubs (*i.e.,* 79 days) had a litter size of 0. There were only 3 bears in the USGS (2018) data that met this criteria, leading to an assumed probability of a litter size of 0 at emergence being 0.07. We, therefore, assigned the probability of 0, 1, 2, or 3 cubs as 0.07, 0.15, 0.71, and 0.07, respectively.

Infrastructure and Human Activities

The model developed by Wilson and Durner (2020) provides a template for estimating the level of potential impact to denning polar bears of proposed activities while also considering the natural denning ecology of polar bears in the region. The approach developed by Wilson and Durner (2020) also allows for the incorporation of uncertainty in both the metric associated with denning bears and in the timing and spatial patterns of proposed activities when precise information on those activities is unavailable. Below we describe the different sources of potential disturbance we considered within the model. We considered infrastructure and human activities only within the area of proposed activity in the ITR Request. However, given that activity on the border of this region could still affect dens falling outside of the area defined in the ITR Request, we also considered the impacts to denning bears within a 1-mile buffer outside of the proposed activity area.

Roads and Pads

We obtained shapefiles of existing and proposed road and pad infrastructure associated with industrial activities from AOGA. Each attribute in the shapefiles included a monthly occupancy rate that ranged from 0 to 1. For this analysis, we assumed that any road or pad with occupancy greater than 0 for a given month had the potential for human activity during the entire month unless otherwise noted.

Ice Roads and Tundra Travel

We obtained shapefiles of proposed ice road and tundra travel routes from AOGA. We also received information on the proposed start and end dates for ice roads and tundra routes each winter from AOGA with activity anticipated to occur at least daily along each.

Seismic Surveys

Seismic surveys are planned to occur in the central region of the project area proposed by AOGA (Figure 7). The region where seismic surveys would occur were split into two different portions representing relatively high and relatively low probabilities of polar bear dens being present (Figure 7). During any given winter, no more than 766 km² and 1183 km² will be surveyed in the high- and low-density areas, respectively. Therefore, for this analysis, we estimated take rates by assuming that seismic surveys would occur in the portions of those areas with the highest underlying probabilities of denning occurring and covering the largest area proposed in each (*i.e.,* 766 km² and 1183 km²). All seismic surveys could start as early as January 1 and operate until April 15.

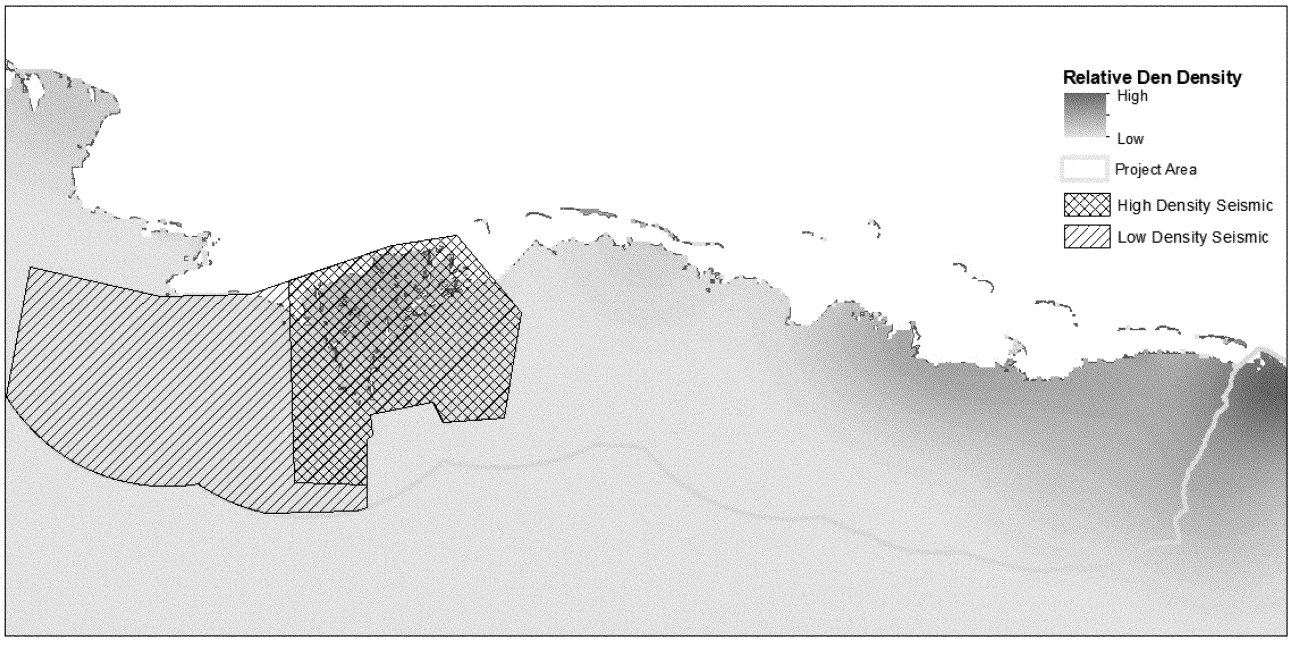

Figure 7—Depiction of areas where seismic surveys occurred in simulations with underlying map of relative den density. The high-density seismic area covers a region with relatively high probability of denning, and the low-density seismic area covers a region with relatively low probability of denning. During any given winter, no more than 766 km^2 and 1,183 km^2 will be surveyed in the high-density and low-density areas, respectively.

Pipelines

We obtained shapefiles of existing and proposed pipelines, as well as which months and years each pipeline would be operational, from AOGA. Based on the description in the Request, we assumed that all pipelines would have aerial surveys conducted weekly with aircraft flying at altitudes <457.2 m (<1,500 ft) and potentially exposing polar bears to disturbance.

Other Aircraft Activities

Aside from flights to survey pipelines, the majority of aircraft flights are expected to occur at altitudes >457.2 m (>1,500 ft). After reviewing current and proposed flight patterns for flights likely to occur at altitudes <457.2 m (<1,500 ft), we found one flight path that we included in the model. The flight path is between the Oooguruk drill site and the onshore tie-in pad with at least daily flights between September 1 and January 31. We, therefore, also considered these flights as a continuous source of potential exposure to denning bears.

Aerial Infrared Surveys

Based on AOGA's Request, we assumed that all permanent infrastructure (*i.e.,* roads, pipelines, and pads), tundra travel routes, and ice roads would receive two aerial infrared (AIR) surveys of polar bear den habitat within 1 mile of those features each winter. The first survey could occur between December 1 and 25 and the second between December 15 through January 10 with at least 24 hours between the completion of the first survey and the beginning of the second. During winters when seismic surveys occur, additional AIR surveys would be required. A total of three AIR surveys of any den habitat within 1 mile of the seismic survey area would be required prior to any seismic-related activities occurring (*e.g.,* advance crews checking ice conditions). The first AIR survey would need to occur between November 25 and December 15, the second between December 5 and 31, and the third between December 15 and January 15 with the same minimum of 24 hours between subsequent surveys. Similarly, during winters when seismic surveys occur, an additional AIR survey would be required of denning habitat within 1 mile of the pipeline between Badami and the road to Endicott Island. The additional survey of the pipeline (to create a total of three) would need to occur between December 5 and January 10.

During each iteration of the model, each AIR survey was randomly assigned a probability of detecting dens. Whereas previous analyses have used the results of Wilson and Durner (2020) to inform this detection probability, two additional studies (Smith *et al.* 2020, Woodruff et al. in prep.) have been conducted since Wilson and Durner (2020) was published that require an updated approach. The study by Woodruff et al. (in prep.) considered the probability of detecting heat signatures from artificial polar bear dens. They did not find a relationship between den snow depth and detection and estimated a mean detection rate of 0.24. A recent study by Smith et al. (2020) estimated that the detection rate for actual polar bear dens in northern Alaska was 0.45 and also did not report any relationship between detection and den snow depth. Because the study by Wilson and Durner (2020) reported detection probability only for dens with less than 100 cm snow depth, we needed to correct it to also include those dens with greater than 100 cm snow depth. Based on the distribution of snow depths used by Wilson and Durner (2020) derived from data in Durner et al. (2003), we determined that 24 percent of dens have snow depths greater than 100 cm. After taking these into account, the overall detection probability from Wilson and Durner (2020) including dens with snow depths greater than 100 cm was estimated to be 0.54. This led to a mean detection of 0.41 and standard deviation of 0.15 across the three studies. We used these values, and the method of moments (Hobbs and Hooten 2015), to inform a Beta distribution (*i.e.,*

$$Beta\left(\frac{0.41^2-0.41^3-0.41\times0.1539^2}{0.1539^2},\frac{0.41-2\times0.41^2+0.41^3-0.1539^2+0.41\times0.1539^2}{0.1539^2}\right))$$

from which we drew a detection probability for each of the simulated AIR surveys during each iteration of the model.

Model Implementation

For each iteration of the model, we first determined which dens were exposed to each of the simulated activities and infrastructure. We assumed that any den within 1.6 km (1 mi) of infrastructure or human activities was exposed and had the potential to be disturbed as numerous studies have suggested a 1.6-km buffer is sufficient to reduce disturbance to denning polar bears (MacGillivray et al. 2003, Larson et al. 2020, Owen et al. 2021). If, however, a den was detected by an AIR survey prior to activity occurring within 1.6 km of it, we assumed a 1.6-km buffer would be established to restrict activity adjacent to the den and there would be no potential for future disturbance. If a den was detected by an AIR survey after activity occurred within 1.6 km of it, as long as the activity did not result in a Level A harassment or lethal take, we assumed a 1.6-km buffer would be applied to prevent disturbance during future denning periods. For dens exposed to human activity (*i.e.,* not detected by an AIR survey), we then identified the stage in the denning cycle when the exposure occurred based on the date range of the activities the den was exposed to. We then determined whether the exposure elicited a response by the denning bear based on probabilities derived from the reviewed case studies (Table 7). Level B harassment was applicable to both adults and cubs, if present, whereas Level A harassment (*i.e.,* serious injury and non-serious injury) and lethal take were applicable only to cubs because the proposed activities had a discountable risk of running over dens and thus killing a female or impacting her future reproductive potential. The majority of proposed activities occur on established, permanent infrastructure that would not be suitable for denning and therefore, pose no risk of being run over (*i.e.,* an existing road). For those activities off permanent infrastructure (*i.e.,* ice roads and tundra travel routes), crews will constantly be on the lookout for signs of denning, use vehicle-based forward looking infrared cameras to scan for dens, and will largely avoid crossing topographic features suitable for denning given operational constraints. Thus, the risk of running over a den was deemed to have a probability so low that it was discountable.

Based on AOGA's description of their proposed activities, we only considered AIR surveys and pipeline inspection surveys as discrete exposures given that surveys occur quickly (*i.e.,* the time for an airplane to fly over) and infrequently. For all other activities, we applied probabilities associated with repeated exposure (Table 7). For the pipeline surveys, we made one modification to the probabilities applied compared to

those listed in Table 7. The case studies used to inform the post-emergence period include one where an individual fell into a den and caused the female to abandon her cubs. Given that pipeline surveys would either occur with a plane or a vehicle driving along an established path adjacent to a pipeline, there would be no chance of falling into a den. Therefore, we excluded this case study from the calculation of disturbance probabilities applied to our analysis, which led to a 0 percent probability of lethal take and a 100 percent probability of non-serious injury Level A harassment.

For dens exposed to human activity, we used a multinomial distribution with the probabilities of different levels of take for that period (Table 7). If a Level A harassment or lethal take was simulated to occur, a den was not allowed to be disturbed again during the subsequent denning periods because the outcome of that denning event was already determined. As noted above, Level A harassments and lethal takes only applied to cubs because proposed activities would not result in those levels of take for adult females. Adult females, however, could still receive Level B harassment during the den establishment period or any time cubs received Level B harassment, Level A harassment (*i.e.,* serious injury and non-serious injury), or lethal take.

We developed the code to run this model in program R (R Core Development Team 2021) and ran 10,000 iterations of the model (*i.e.,* Monte Carlo simulation) to derive the estimated number of animals disturbed and associated levels of take. We ran the model for each of the five winters covered by the ITR (*i.e.,* 2021/2022, 2022/2023, 2023/2024, 2024/2025, 2025/2026). For each winter's analysis, we analyzed the most impactful scenario that was possible. For example, seismic surveys may not occur every winter, but it is unclear which winters would have seismic surveys and which would not. Therefore, each of the scenarios were run with the inclusion of seismic surveys (and their additional AIR surveys) knowing that take rates will be less for a given winter if seismic surveys did not occur. Similarly, in some winters, winter travel between Deadhorse and Point Thomson will occur along an ice road running roughly parallel to the pipeline connecting the two locations. However, in other winters, the two locations will be connected via a tundra travel route farther south. Through preliminary analyses, we found that the tundra travel route led to higher annual take estimates. Therefore, for each of the scenarios, we only considered the tundra travel route knowing that take rates will be less when the more northern ice road is used.

Model Results

On average, we estimated 52 (median = 51; *95% CI*: 30–80) land-based dens in the area of proposed activity in AOGA's Request within a 1.6-km (1-mi) buffer. Annual estimates for different levels of take are presented in Table 8. We also estimated that Level B harassment take from AIR surveys was never greater than a mean of 1.53 (median = 1; 95% CI: 0–5) during any winter. The distributions of both non-serious Level A and serious Level A/Lethal possible takes were non-normal and heavily skewed, as indicated by markedly different mean and median values. The heavily skewed nature of these distributions has led to a mean value that is not representative of the most common model result (*i.e.,* the median value), which for both non-serious Level A and serious Level A/Lethal takes is 0.0 takes. Due to the low (<0.29 for non-serious Level A and ≤0.462 for serious Level A/Lethal takes) probability of greater than or equal to 1 non-serious or serious injury Level A harassment/Lethal take each year of the proposed ITR period, combined with the median of 0.0 for each, we do not estimate the proposed activities will result in non-serious or serious injury Level A harassment or lethal take of polar bears.

TABLE 8—RESULTS OF THE DEN DISTURBANCE MODEL FOR EACH WINTER OF PROPOSED ACTIVITY

Winter (20XX)	Level B harassment				Non-serious Level A				Serious Level A/lethal			
	Prob	Mean	Med	95% CI	Prob	Mean	Med	95% CI	Prob	Mean	Med	95% CI
21–22	0.89	3.1	3.0	0–9	0.28	0.7	0.0	0–4	0.45	1.2	0.0	0–5
22–23	0.90	3.2	3.0	0–9	0.29	0.7	0.0	0–4	0.46	1.2	0.0	0–6
23–24	0.90	3.1	3.0	0–9	0.28	0.6	0.0	0–4	0.46	1.2	0.0	0–5
24–25	0.90	3.1	3.0	0–9	0.28	0.6	0.0	0–4	0.46	1.2	0.0	0–6
25–26	0.90	3.2	3.0	0–9	0.28	0.7	0.0	0–4	0.46	1.2	0.0	0–5

Estimates are provided for the probability (Prob), mean, median (Med), and 95% Confidence Intervals (CI) for Level B, Non-Serious Level A, and Serious Level A/Lethal take. The probabilities represent the probability of ≥1 take of a bear occurring during a given winter.

Maritime Activities

Vessel Traffic

Maritime activities were divided into two categories of potential impact: vessel traffic and in-water construction. Vessel traffic was further divided into two categories: Repeated, frequent trips by small boats and hovercraft for crew movement and less frequent trips to move fuel and equipment by tugs and barges. We estimated the potential Level B harassment take from the repeated, frequent trips by crew boats and hovercraft in *Polar Bear: Surface Interactions* as marine roads using an occupancy rate of 0.2. This occupancy rate accounts for 20 percent of the impact area (*i.e.,* the length of the route buffered by 1.6 km (1 mi)) being impacted at any given point throughout the year, which is consistent with the daily trips described by AOGA.

For less frequent trips for fuel and equipment resupply by tugs and barges, AOGA has supplied the highest expected number of trips that may be taken each year. Because we have been supplied with a finite number of potential trips, we used the impact area of the barge/tug combination as it moves in its route from one location to the next. We estimated a 16.5-km^2 (6.37-mi^2) take area for the barge, tug, and associated tow line, which accounts for a barge, tow, and tug length of 200 m (656 ft), width of 100 m (328 ft), and a 1.6-km (1-mi) buffer surrounding the vessels. We calculated the total hours of impact using an average vessel speed of two knots (3.7 km/hr), and then calculated the proportion of the open-water season that would be impacted (Table 9).

TABLE 9—CALCULATION OF THE TOTAL NUMBER OF BARGE AND TUG VESSEL TRIP HOURS AND THE PROPORTION OF THE SEASON POLAR BEARS MAY BE IMPACTED IN A 16.5-KM^2 IMPACT AREA BY BARGE/TUG PRESENCE

Origin	Destination	Frequency	Est. length (km)	Time/trip (hr)	Total time (hr)
West Dock	Milne Point	1	38	10	10
Milne Point	West Dock	1	38	10	10
West Dock	Endicott	30	22	6	178
Endicott	Badami	10	42	11	114
Badami	Pt. Thomson	10	32	9	86
Pt. Thomson	West Dock	10	96	26	259
Total Hours					658
Proportion of Season Impacted by Barge/Tug Use					0.24

The number of estimated takes was then calculated using Equation 4, in which the impact area is multiplied by encounter rate, proportion of season, and harassment rate for the open-water season. The final number of estimated Level B harassment events from barge/tug trips was 1.12 bears per year.

In-Water Construction

Polar bears are neither known to vocalize underwater nor to rely substantially upon underwater sounds to locate prey. However, for any predator, loss of hearing is likely to be an impediment to successful foraging. The Service has applied a 190 dB re 1 µPa threshold for TTS and a 180 dB re1µPa threshold for Level B harassment arising from exposure of polar bears to underwater sounds for previous authorizations in the Beaufort and Chukchi Seas; seas. However, given the projection of polar bear TTS at 188 dB by Southall et al. (2019) referenced in Figure 1, we used a threshold of Level B harassment at 180 dB re 1 µPa in our analysis for these regulations.

The proposal for the 2021–2026 ITR period includes several activities that will create underwater sound, including dredging, screeding, pile driving, gravel placement, and geohazard surveys. Underwater sounds and the spatial extent to which they propagate are variable and dependent upon the sound source (*e.g.,* size and composition of a pile for pile driving, equipment type for geophysical surveys, etc.), the installation method, substrate type, presence of sea ice, and water depth. Source levels range from less than 160 dB re 1 µPa to greater than 200 dB re 1 µPa (Rodkin and Pommerenck, 2014), meaning some sounds reach the level of TTS, however they do not reach the level of PTS (Table 1). Although these activities result in underwater areas that are above the 180 dB Level B harassment threshold for polar bears, the areas above the threshold will be small and fall within the current impact area (1.6 km) used to estimate polar bear harassment due to surface interactions. Thus, additional harassment calculations based on in-water noise are not necessary. Similarly, any in-air sounds generated by underwater sources are not expected to propagate above the Level B harassment thresholds listed in Table 1 beyond the 1.6-km (1.0-mi) impact area established in *Polar Bear: Surface Interactions.*

Sum of Harassment From All Sources

A summary of total numbers of estimated take by Level B harassments during the duration of the project by season and take category is provided in Table 10. The potential for lethal or Level A harassment was explored. The highest probability of greater than or equal to 1 lethal or serious Level A harassment take of polar bears over the 5-year ITR period was 0.462.

TABLE 10—TOTAL ESTIMATED LEVEL B HARASSMENT EVENTS OF POLAR BEARS PER YEAR AND SOURCE

Year	Level B harassment of polar bears on the surface or in water					Total
	Surface activity	Seismic exploration	Vessel activity	Aircraft overflights	Denning bears	
Open water 2021–Ice 2021/2022	56.54	1.94	1.12	0.82	3.1	65
Open water 2022–Ice 2022/2023	83.77	1.94	1.12	0.95	3.2	91
Open water 2023–Ice 2023/2024	84.28	1.94	1.12	0.95	3.1	92
Open water 2024–Ice 2024/2025	84.23	1.94	1.12	1.09	3.1	92
Open water 2025–Ice 2025/2026	84.48	1.94	1.12	1.09	3.2	92
Open water 2026	12	0.00	1.12	0.15	0	14

Critical Assumptions

To conduct this analysis and estimate the potential amount of Level B harassment, several critical assumptions were made.

Level B harassment is equated herein with behavioral responses that indicate harassment or disturbance. There is likely a portion of animals that respond in ways that indicate some level of disturbance but do not experience significant biological consequences. Our estimates do not account for variable responses by polar bear age and sex; however, sensitivity of denning bears was incorporated into the analysis. The available information suggests that polar bears are generally resilient to low levels of disturbance. Females with dependent young and juvenile polar bears are physiologically the most sensitive (Andersen and Aars 2008) and most likely to experience harassment from disturbance. There is not enough information on composition of the SBS polar bear stock in the ITR area to incorporate individual variability based on age and sex or to predict its influence on harassment estimates. Our estimates are derived from a variety of sample populations with various age and sex structures, and we assume the exposed population will have a similar

composition and therefore, the response rates are applicable.

The estimates of behavioral response presented here do not account for the individual movements of animals away from the ITR area or habituation of animals to noise or human presence. Our assessment assumes animals remain stationary, (*i.e.,* density does not change). There is not enough information about the movement of polar bears in response to specific disturbances to refine this assumption. This situation could result in overestimation of harassment; however, we cannot account for harassment resulting from a polar bear moving into less preferred habitat due to disturbance.

Potential Effects of Oil Spills on Pacific Walruses and Polar Bears

Walrus and polar bear ranges overlap with many active and planned Industry activities—resulting in associated risks of oil spills from facilities, ships, and pipelines in both offshore and onshore habitat. To date, no major offshore oil spills have occurred in the Alaska Beaufort Sea. Although numerous small onshore spills have occurred on the North Slope. To date, there have been no documented effects to polar bears.

Oil spills are unintentional releases of oil or petroleum products. In accordance with the National Pollutant Discharge Elimination System Permit Program, all North Slope oil companies must submit an oil spill contingency plan. It is illegal to discharge oil into the environment, and a reporting system requires operators to report spills. Between 1977 and 1999, an average of 70 oil and 234 waste product spills occurred annually on the North Slope oilfields. Although most spills have been small by Industry standards (less than 50 bbl), larger spills (more than 500 bbl) accounted for much of the annual volume. In the North Slope, a total of seven large spills occurred between 1985 and 2009. The largest of these spills occurred in the spring of 2006 when approximately 6,190 bbl leaked from flow lines near an oil gathering center. More recently, several large spills have occurred. In 2012, 1,000 bbl of drilling mud and 100 bbl of crude were spilled in separate incidents; in 2013, approximately 166 bbl of crude oil was spilled; and in 2014, 177 bbl of drilling mud was spilled. In 2016, 160 bbl of mixed crude oil and produced water was spilled. These spills occurred primarily in the terrestrial environment in heavily industrialized areas not utilized by walruses or polar bears and therefore, posed little risk to the animals.

The two largest onshore oil spills were in the terrestrial environment and occurred because of pipeline failures. In the spring of 2006, approximately 6,190 bbl of crude oil spilled from a corroded pipeline operated by BP Exploration (Alaska). The spill impacted approximately 0.8 ha (~2 ac). In November 2009, a spill of approximately 1,150 bbl from a ''common line'' carrying oil, water, and natural gas operated by BP occurred as well, impacting approximately 780 m^2 (~8,400 ft^2). None of these spills were known to impact polar bears, in part due to the locations and timing. Both sites were within or near Industry facilities not frequented by polar bears, and polar bears are not typically observed in the affected areas during the time of the spills and subsequent cleanup.

Nonetheless, walruses and polar bears could encounter spilled oil from exploratory operations, existing offshore facilities, pipelines, or from marine vessels. The shipping of crude oil, oil products, or other toxic substances, as well as the fuel for the shipping vessels, increases the risk of a spill.

As additional offshore Industry projects are planned, the potential for large spills in the marine environment increases. Oil spills in the sea-ice environment, at the ice edge, in leads, polynyas, and similar areas of importance to walruses and polar bears present an even greater challenge because of both the difficulties associated with cleaning oil in sea-ice along with the presence of wildlife in those areas.

Oiling of food sources, such as ringed seals, may result in indirect effects on polar bears, such as a local reduction in ringed seal numbers, or a change to the local distribution of seals and bears. More direct effects on polar bears could occur from: (1) Ingestion of oiled prey, potentially resulting in reduced survival of individual bears; (2) oiling of fur and subsequent ingestion of oil from grooming; (3) oiling and fouling of fur with subsequent loss of insulation, leading to hypothermia; and (4) disturbance, injury, or death from interactions with humans during oil spill response activities. Polar bears may be particularly vulnerable to disturbance when nutritionally stressed and during denning. Cleanup operations that disturb a den could result in death of cubs through abandonment, and perhaps, death of the female as well. In spring, females with cubs of the year that denned near or on land and migrate to contaminated offshore areas may encounter oil following a spill (Stirling in Geraci and St. Aubin 1990).

In the event of an oil spill, the Service follows oil spill response plans, coordinates with partners, and reduces the impact of a spill on wildlife. Several factors will be considered when responding to an oil spill—including spill location, magnitude, oil viscosity and thickness, accessibility to spill site, spill trajectory, time of year, weather conditions (*i.e.,* wind, temperature, precipitation), environmental conditions (*i.e.,* presence and thickness of ice), number, age, and sex of walruses and polar bears that are (or are likely to be) affected, degree of contact, importance of affected habitat, cleanup proposal, and likelihood of human–bear interactions. Response efforts will be conducted under a three-tier approach characterized as: (1) Primary response, involving containment, dispersion, burning, or cleanup of oil; (2) secondary response, involving hazing, herding, preventative capture/relocation, or additional methods to remove or deter wildlife from affected or potentially affected areas; and (3) tertiary response, involving capture, cleaning, treatment, and release of wildlife. If the decision is made to conduct response activities, primary and secondary response options will be vigorously applied. Tertiary response capability has been developed by the Service and partners, though such response efforts would most likely be able to handle only a few animals at a time. More information is available in the Service's oil spill response plans for walruses and polar bears in Alaska, which is located at: *https://www.fws.gov/r7/fisheries/contaminants/pdf/Polar%20Bear%20WRP%20final%20v8_Public%20website.pdf.*

BOEM has acknowledged that there are difficulties in effective oil-spill response in broken-ice conditions, and the National Academy of Sciences has determined that ''no current cleanup methods remove more than a small fraction of oil spilled in marine waters, especially in the presence of broken ice.'' BOEM advocates the use of non-mechanical methods of spill response, such as in-situ burning during periods when broken ice would hamper an effective mechanical response (MMS 2008). An in-situ burn has the potential to rapidly remove large quantities of oil and can be employed when broken-ice conditions may preclude mechanical response. However, the resulting smoke plume may contain toxic chemicals and high levels of particulates that can pose health risks to marine mammals, birds, and other wildlife as well as to humans. As a result, smoke trajectories must be considered before making the decision to burn spilled oil. Another potential

non-mechanical response strategy is the use of chemical dispersants to speed dissipation of oil from the water surface and disperse it within the water column in small droplets. However, dispersant use presents environmental trade-offs. While walruses and polar bears would likely benefit from reduced surface or shoreline oiling, dispersant use could have negative impacts on the aquatic food chain. Oil spill cleanup in the broken-ice and open-water conditions that characterize Arctic waters is problematic.

Evaluation of Effects of Oil Spills on Pacific Walruses and Polar Bears

The MMPA does not authorize the incidental take of marine mammals as the result of illegal actions, such as oil spills. Nor do the specified activities in AOGA's request include oil spills. Any event that results in an injurious or lethal outcome to a marine mammal is not authorized under this ITR. However, for the purpose of developing a more complete context for evaluating potential effects on walruses and polar bears, the Service evaluated the potential impacts of oil spills within the Beaufort Sea ITR region.

Pacific Walrus

As stated earlier, the Beaufort Sea is not within the primary range for walruses. Therefore, the probability of walruses encountering oil or waste products as a result of a spill from Industry activities is low. Onshore oil spills would not impact walruses unless they occurred on or near beaches or oil moved into the offshore environment. However, in the event of a spill that occurs during the open-water season, oil in the water column could drift offshore and possibly encounter a small number of walruses. Oil spills from offshore platforms could also contact walruses under certain conditions. For example, spilled oil during the ice-covered season that isn't cleaned up could become part of the ice substrate and could eventually be released back into the environment during the following open-water season. Additionally, during spring melt, oil would be collected by spill response activities, but it could eventually contact a limited number of walruses.

Little is known about the effects of oil, specifically on walruses, as no studies have been conducted to date. Hypothetically, walruses may react to oil much like other pinnipeds. Walruses are not likely to ingest oil while grooming since walruses have very little hair and exhibit no grooming behavior. Adult walruses may not be severely affected by the oil spill through direct contact, but they will be extremely sensitive to any habitat disturbance by human noise and response activities. In addition, due to the gregarious nature of walruses, an oil spill would most likely affect multiple individuals in the area. Walruses may also expose themselves more often to the oil that has accumulated at the edge of a contaminated shore or ice lead if they repeatedly enter and exit the water.

Walrus calves are most likely to suffer the ill-effects of oil contamination. Female walruses with calves are very attentive, and the calf will always stay close to its mother—including when the female is foraging for food. Walrus calves can swim almost immediately after birth and will often join their mother in the water. It is possible that an oiled calf will be unrecognizable to its mother either by sight or by smell and be abandoned. However, the greater threat may come from an oiled calf that is unable to swim away from the contamination and a devoted mother that would not leave without the calf, resulting in the potential mortality of both animals. Further, a nursing calf might ingest oil if the mother was oiled, also increasing the risk of injury or mortality.

Walruses have thick skin and blubber layers for insulation. Heat loss is regulated by control of peripheral blood flow through the animal's skin and blubber. The peripheral blood flow is decreased in cold water and increased at warmer temperatures. Direct exposure of walruses to oil is not believed to have any effect on the insulating capacity of their skin and blubber, although it is unknown if oil could affect their peripheral blood flow.

Damage to the skin of pinnipeds can occur from contact with oil because some of the oil penetrates the skin, causing inflammation and death of some tissue. The dead tissue is discarded, leaving behind an ulcer. While these skin lesions have only rarely been found on oiled seals, the effects on walruses may be greater because of a lack of hair to protect the skin. Direct exposure to oil can also result in conjunctivitis. Like other pinnipeds, walruses are susceptible to oil contamination in their eyes. Continuous exposure to oil will quickly cause permanent eye damage.

Inhalation of hydrocarbon fumes presents another threat to marine mammals. In studies conducted on pinnipeds, pulmonary hemorrhage, inflammation, congestion, and nerve damage resulted after exposure to concentrated hydrocarbon fumes for a period of 24 hours. If the walruses were also under stress from molting, pregnancy, etc., the increased heart rate associated with the stress would circulate the hydrocarbons more quickly, lowering the tolerance threshold for ingestion or inhalation.

Walruses are benthic feeders, and much of the benthic prey contaminated by an oil spill would be killed immediately. Others that survived would become contaminated from oil in bottom sediments, possibly resulting in slower growth and a decrease in reproduction. Bivalve mollusks, a favorite prey species of the walrus, are not effective at processing hydrocarbon compounds, resulting in highly concentrated accumulations and long-term retention of the contamination within the organism. Specifically, bivalve mollusks bioconcentrate polycyclic aromatic hydrocarbons (PAHs). These compounds are a particularly toxic fraction of oil that may cause a variety of chronic toxic effects in exposed organisms, including enzyme induction, immune impairment, or cancer, among others. In addition, because walruses feed primarily on mollusks, they may be more vulnerable to a loss of this prey species than other pinnipeds that feed on a larger variety of prey. Furthermore, complete recovery of a bivalve mollusk population may take 10 years or more, forcing walruses to find other food resources or move to nontraditional areas.

The relatively few walruses in the Beaufort Sea and the low potential for a large oil spill (1,000 bbl or more), which is discussed in the following Risk Assessment Analysis, limit potential impacts to walruses to only certain events (*i.e.,* a large oil spill), which is further limited to only a handful of individuals. Fueling crews have personnel that are trained to handle operational spills and contain them. If a small offshore spill occurs, spill response vessels are stationed in close proximity and respond immediately.

Polar Bear

To date, large oil spills from Industry activities in the Beaufort Sea and coastal regions that would impact polar bears have not occurred, although the interest in and the development of offshore hydrocarbon reservoirs has increased the potential for large offshore oil spills. With limited background information available regarding oil spills in the Arctic environment, the outcome of such a spill is uncertain. For example, in the event of a large spill equal to a rupture in the Northstar pipeline and a complete drain of the subsea portion of the pipeline (approximately 5,900 bbl), oil would be influenced by seasonal weather and sea conditions including temperature, winds, wave action, and currents. Weather and sea conditions

also affect the type of equipment needed for spill response and the effectiveness of spill cleanup. Based on the experiences of cleanup efforts following the *Exxon Valdez* oil spill, where logistical support was readily available, spill response may be largely unsuccessful in open-water conditions. Indeed, spill response drills have been unsuccessful in the cleanup of oil in broken-ice conditions.

Small spills of oil or waste products throughout the year have the potential to impact some bears. The effects of fouling fur or ingesting oil or wastes, depending on the amount of oil or wastes involved, could be short term or result in death. For example, in April 1988, a dead polar bear was found on Leavitt Island, northeast of Oliktok Point. The cause of death was determined to be a mixture that included ethylene glycol and Rhodamine B dye (Amstrup et al. 1989). Again, in 2012, two dead polar bears that had been exposed to Rhodamine B were found on Narwhal Island, northwest of Endicott. While those bears' deaths were clearly human-caused, investigations were unable to identify a source for the chemicals. Rhodamine B is commonly used on the North Slope of Alaska by many people for many uses, including Industry. Without identified sources of contamination, those bear deaths cannot be attributed to Industry activity.

During the ice-covered season, mobile, non-denning bears would have a higher probability of encountering oil or other production wastes than non-mobile, denning females. Current management practices by Industry, such as requiring the proper use, storage, and disposal of hazardous materials, minimize the potential occurrence of such incidents. In the event of an oil spill, it is also likely that polar bears would be intentionally hazed to keep them away from the area, further reducing the likelihood of impacting the population.

In 1980, Oritsland et al. (1981) performed experiments in Canada that studied the effects of oil exposure on polar bears. Effects on experimentally oiled bears (where bears were forced to remain in oil for prolonged periods of time) included acute inflammation of the nasal passages, marked epidermal responses, anemia, anorexia, and biochemical changes indicative of stress, renal impairment, and death. Many effects did not become evident until several weeks after the experiment.

Oiling of the pelt causes significant thermoregulatory problems by reducing insulation value. Irritation or damage to the skin by oil may further contribute to impaired thermoregulation. Experiments on live polar bears and pelts showed that the thermal value of the fur decreased significantly after oiling, and oiled bears showed increased metabolic rates and elevated skin temperature. Oiled bears are also likely to ingest oil as they groom to restore the insulation value of the oiled fur.

Oil ingestion by polar bears through consumption of contaminated prey, and by grooming or nursing, could have pathological effects depending on the amount of oil ingested and the individual's physiological state. Death could occur if a large amount of oil was ingested or if volatile components of oil were aspirated into the lungs. In the Canadian experiment (Ortisland et al. 1981), two of three bears died. A suspected contributing factor to their deaths was ingestion of oil. Experimentally oiled bears ingested large amounts of oil through grooming. Much of the oil was eliminated by vomiting and defecating; some was absorbed and later found in body fluids and tissues.

Ingestion of sublethal amounts of oil can have various physiological effects on polar bears, depending on whether the animal is able to excrete or detoxify the hydrocarbons. Petroleum hydrocarbons irritate or destroy epithelial cells lining the stomach and intestine, thereby affecting motility, digestion, and absorption.

Polar bears swimming in or walking adjacent to an oil spill could inhale toxic, volatile organic compounds from petroleum vapors. Vapor inhalation by polar bears could result in damage to the respiratory and central nervous systems depending on the amount of exposure.

Oil may also affect food sources of polar bears. Seals that die as a result of an oil spill could be scavenged by polar bears. This food source would increase exposure of the bears to hydrocarbons and could result in lethal impacts or reduced survival to individual bears. A local reduction in ringed seal numbers as a result of direct or indirect effects of oil could temporarily affect the local distribution of polar bears. A reduction in density of seals as a direct result of mortality from contact with spilled oil could result in polar bears not using a particular area for hunting. Further, possible impacts from the loss of a food source could reduce recruitment and/or survival.

Spilled oil can concentrate and accumulate in leads and openings that occur during spring break-up and autumn freeze-up periods. Such a concentration of spilled oil would increase the likelihood that polar bears and their principal prey would be oiled. To access ringed and bearded seals, polar bears in the SBS concentrate in shallow waters less than 300 m (984 ft) deep over the continental shelf and in areas with greater than 50 percent ice cover (Durner et al. 2004).

Due to their seasonal use of nearshore habitat, the times of greatest impact from an oil spill to polar bears are likely the open-water and broken-ice periods (summer and fall), extending into the ice-covered season (Wilson et al. 2018). This scenario is important because distributions of polar bears are not uniform through time. Nearshore and offshore polar bear densities are greatest in fall, and polar bear use of coastal areas during the fall open-water period has increased in recent years in the Beaufort Sea. An analysis of data collected from the period 2001–2005 during the fall open-water period concluded: (1) On average approximately 4 percent of the estimated polar bears in the Southern Beaufort Sea stock were observed onshore in the fall; (2) 80 percent of bears onshore occurred within 15 km (9 mi) of subsistence-harvested bowhead whale carcasses, where large congregations of polar bears have been observed feeding; and (3) sea-ice conditions affected the number of bears on land and the duration of time they spent there (Schliebe et al. 2006). Hence, bears concentrated in areas where beach-cast marine mammal carcasses occur during the fall would likely be more susceptible to oiling.

Wilson et al. (2018) analyzed the potential effects of a ''worst case discharge'' (WCD) on polar bears in the Chukchi Sea. Their WCD scenario was based on an Industry oil spill response plan for offshore development in the region and represented underwater blowouts releasing 25,000 bbls of crude oil per day for 30 days beginning in October. The results of this analysis suggested that between 5 and 40 percent of a stock of 2,000 polar bears in the Chukchi Sea could be exposed to oil if a WCD occurred. A similar analysis has not been conducted for the Beaufort Sea; however, given the extremely low probability (*i.e.,* 0.0001) that an unmitigated WCD event would occur (BOEM 2016, Wilson *et al.* 2017), the likelihood of such effects on polar bears in the Beaufort Sea is extremely low.

The persistence of toxic subsurface oil and chronic exposures, even at sublethal levels, can have long-term effects on wildlife (Peterson et al. 2003). Exposure to PAHs can have chronic effects because some effects are sublethal (*e.g.,* enzyme induction or

immune impairment) or delayed (*e.g.,* cancer). Although it is true that some bears may be directly affected by spilled oil initially, the long-term impact could be much greater. Long-term effects could be substantial through complex environmental interactions—compromising the health of exposed animals. For example, PAHs can impact the food web by concentrating in filter-feeding organisms, thus affecting fish that feed on those organisms, and the predators of those fish, such as the ringed seals that polar bears prey upon. How these complex interactions would affect polar bears is not well understood, but sublethal, chronic effects of an oil spill may affect the polar bear population due to reduced fitness of surviving animals.

Polar bears are biological sinks for some pollutants, such as polychlorinated biphenyls or organochlorine pesticides, because polar bears are an apex predator of the Arctic ecosystem and are also opportunistic scavengers of other marine mammals. Additionally, their diet is composed mostly of high-fat sealskin and blubber (Norstrom et al. 1988). The highest concentrations of persistent organic pollutants in Arctic marine mammals have been found in seal-eating walruses and polar bears near Svalbard (Norstrom et al. 1988, Andersen et al. 2001, Muir et al. 1999). As such, polar bears would be susceptible to the effects of bioaccumulation of contaminants, which could affect their reproduction, survival, and immune systems.

In addition, subadult polar bears are more vulnerable than adults to environmental effects (Taylor et al. 1987). Therefore, subadults would be most prone to the lethal and sublethal effects of an oil spill due to their proclivity for scavenging (thus increasing their exposure to oiled marine mammals) and their inexperience in hunting. Due to the greater maternal investment a weaned subadult represents, reduced survival rates of subadult polar bears have a greater impact on population growth rate and sustainable harvest than reduced litter production rates (Taylor et al. 1987).

Evaluation of the potential impacts of spilled Industry waste products and oil suggest that individual bears could be adversely impacted by exposure to these substances (Oritsland et al. 1981). The major concern regarding a large oil spill is the impact such a spill would have on the rates of recruitment and survival of the SBS polar bear stock. Polar bear deaths from an oil spill could be caused by direct exposure to the oil. However, indirect effects, such as a reduction of prey or scavenging contaminated carcasses, could also cause health effects, death, or otherwise affect rates of recruitment and survival. Depending on the type and amount of oil or wastes involved and the timing and location of a spill, impacts could be acute, chronic, temporary, or lethal. For the rates of polar bear reproduction, recruitment, or survival to be impacted, a large-volume oil spill would have to take place. The following section analyzes the likelihood and potential effects of such a large-volume oil spill.

Risk Assessment of Potential Effects Upon Polar Bears From a Large Oil Spill in the Beaufort Sea

In this section, we qualitatively assess the likelihood that polar bear populations on the North Slope may be affected by large oil spills. We considered: (1) The probability of a large oil spill occurring in the Beaufort Sea; (2) the probability of that oil spill impacting coastal polar bear habitat; (3) the probability of polar bears being in the area and coming into contact with that large oil spill; and (4) the number of polar bears that could potentially be impacted by the spill. Although most of the information in this evaluation is qualitative, the probability of all factors occurring sequentially in a manner that impacts polar bears in the Beaufort Sea is low. Since walruses are not often found in the Beaufort Sea, and there is little information available regarding the potential effects of an oil spill upon walruses, this analysis emphasizes polar bears.

The analysis was based on polar bear distribution and habitat use using four sources of information that, when combined, allowed the Service to make conclusions on the risk of oil spills to polar bears. This information included: (1) The description of existing offshore oil and gas production facilities previously discussed in the Description of Activities section; (2) polar bear distribution information previously discussed in the Biological Information section; (3) BOEM Oil-Spill Risk Analysis (OSRA) for the OCS (Li and Smith 2020), including polar bear environmental resource areas (ERAs) and land segments (LSs); and (4) the most recent polar bear risk assessment from the previous ITRs.

Development of offshore production facilities with supporting pipelines increases the potential for large offshore spills. The probability of a large oil spill from offshore oil and gas facilities and the risk to polar bears is a scenario that has been considered in previous regulations (71 FR 43926, August 2, 2006; 76 FR 47010, August 3, 2011; 81 FR 52275, August 5, 2016). Although there is a slowly growing body of scientific literature (*e.g.,* Amstrup et al. 2006, Wilson et al. 2017), the background information available regarding the effects of large oil spills on polar bears in the marine arctic environment is still limited, and thus the impact of a large oil spill is uncertain. As far as is known, polar bears have not been affected by oil spilled as a result of North Slope Industry activities.

The oil-spill scenarios for this analysis include the potential impacts of a large oil spill (*i.e.,* 1,000 bbl or more) from one of the offshore Industry facilities: Northstar, Spy Island, Oooguruk, Endicott, or the future Liberty. Estimating a large oil-spill occurrence is accomplished by examining a variety of factors and associated uncertainty, including location, number, and size of a large oil spill and the wind, ice, and current conditions at the time of a spill.

BOEM Oil Spill Risk Analysis

Because the BOEM OSRA provides the most current and rigorous treatment of potential oil spills in the Beaufort Sea Planning Area, our analysis of potential oil spill impacts applied the results of BOEM's OSRA (Li and Smith 2020) to help analyze potential impacts of a large oil spill originating in the Beaufort Sea ITR region to polar bears. The OSRA quantitatively assesses how and where large offshore spills will likely move by modeling effects of the physical environment, including wind, sea-ice, and currents, on spilled oil. (Smith et al. 1982, Amstrup et al. 2006a).

A previous OSRA estimated that the mean number of large spills is less than one over the 20-year life of past, present, and reasonably foreseeable developments in the Beaufort Sea Planning Area (Johnson et al. 2002). In addition, large spills are more likely to occur during development and production than during exploration in the Arctic (MMS 2008). Our oil spill assessment during a 5-year regulatory period is predicated on the same assumptions.

Trajectory Estimates of Large Offshore Oil Spills

Although it is reasonable to conclude that the chance of one or more large spills occurring during the period of these regulations on the Alaskan OCS from production activities is low, for analysis purposes, we assume that a large spill does occur in order to evaluate potential impacts to polar bears. The BOEM OSRA modeled the trajectories of 3,240 oil spills from 581

possible launch points in relation to the shoreline and biological, physical, and sociocultural resource areas specific to the Beaufort Sea. The chance that a large oil spill will contact a specific ERA of concern within a given time of travel from a certain location (launch area or pipeline segment) is termed a ''conditional probability.'' Conditional probabilities assume that no cleanup activities take place and there are no efforts to contain the spill.

We used two BOEM launch areas (LAs), LA 2 and LA 3, and one pipeline segment (PL), PL 2, from Appendix A of the OSRA (Figure A–2; Li and Smith 2020) to represent the oil spills moving from hypothetical offshore areas. These LAs and PLs were selected because of their proximity to current and proposed offshore facilities.

Oil-Spill-Trajectory Model Assumptions

For purposes of its oil spill trajectory simulation, BOEM made the following assumptions: All spills occur instantaneously; large oil spills occur in the hypothetical origin areas or along the hypothetical PLs noted above; large spills do not weather (*i.e.,* become degraded by weather conditions) for purposes of trajectory analysis; weathering is calculated separately; the model does not simulate cleanup scenarios; the oil spill trajectories move as though no oil spill response action is taken; and large oil spills stop when they contact the mainland coastline.

Analysis of the Conditional Probability Results

As noted above, the chance that a large oil spill will contact a specific ERA of concern within a given time of travel from a certain location (LA or PL), assuming a large spill occurs and that no cleanup takes place, is termed a ''conditional probability.'' From the OSRA, Appendix B, we chose ERAs and land segments (LSs) to represent areas of concern pertinent to polar bears (MMS 2008a). Those ERAs and LSs and the conditional probabilities that a large oil spill originating from the selected LAs or PLs could affect those ERAs and LSs are presented in a supplementary table titled ''Conditional Oil Spill Probabilities'' that can be found on *http://www.regulations.gov* under Docket No. FWS–R7–ES–2021–0037. From the information in this table, we note the highest chance of contact and the range of chances of contact that could occur should a large spill occur from LAs or PLs.

Polar bears are vulnerable to a large oil spill during the open-water period when bears form aggregations onshore. In the Beaufort Sea, these aggregations often form in the fall near subsistence-harvested bowhead whale carcasses. Specific aggregation areas include Point Utqigvik, Cross Island, and Kaktovik. In recent years, more than 60 polar bears have been observed feeding on whale carcasses just outside of Kaktovik, and in the autumn of 2002, North Slope Borough and Service biologists documented more than 100 polar bears in and around Utqigvik. In order for significant impacts to polar bears to occur, (1) a large oil spill would have to occur, (2) oil would have to contact an area where polar bears aggregate, and (3) the aggregation of polar bears would have to occur at the same time as the spill. The risk of all three of these events occurring simultaneously is low.

We identified polar bear aggregations in environmental resource areas and non-grouped land segments (ERA 55, 93, 95, 96, 100; LS 85, 102, 107). The OSRA estimates the chance of contacting these aggregations is 18 percent or less (see Table 1, ''Conditional Oil Spill Probabilities,'' in the Supporting and Related Material in Docket No. FWS–R7–ES–2021–0037). The OSRA estimates for LA 2 and LA 3 have the highest chance of a large spill contacting ERA 96 in summer (Midway, Cross, and Bartlett islands). Some polar bears will aggregate at these islands during August–October (3-month period). If a large oil spill occurred and contacted those aggregation sites outside of the timeframe of use by polar bears, potential impacts to polar bears would be reduced.

Coastal areas provide important denning habitat for polar bears, such as the ANWR and nearshore barrier islands (containing tundra habitat) (Amstrup 1993, Amstrup and Gardner 1994, Durner et al. 2006, USFWS unpubl. data). Considering that 65 percent of confirmed terrestrial dens found in Alaska in the period 1981–2005 were on coastal or island bluffs (Durner et al. 2006), oiling of such habitats could have negative effects on polar bears, although the specific nature and ramifications of such effects are unknown.

Assuming a large oil spill occurs, tundra relief barrier islands (ERA 92, 93, and 94, LS 97 and 102) have up to an 18 percent chance of a large spill contacting them from PL 2. The OSRA estimates suggest that there is a 12 percent chance that oil would contact the coastline of the ANWR (GLS 166). The Kaktovik area (ERA 95 and 100, LS 107) has up to a one percent chance of a spill contacting the coastline. The chance of a spill contacting the coast near Utqiagvik (ERA 55, LS 85) would be as high as 15 percent (see Table 1, ''Conditional Oil Spill Probabilities,'' in the Supporting and Related Material in Docket No. FWS–R7–ES–2021–0037).

All barrier islands are important resting and travel corridors for polar bears, and larger barrier islands that contain tundra relief are also important denning habitat. Tundra-bearing barrier islands within the geographic region and near oilfield development are the Jones Island group of Pingok, Bertoncini, Bodfish, Cottle, Howe, Foggy, Tigvariak, and Flaxman Islands. In addition, Cross Island has gravel relief where polar bears have denned. The Jones Island group is located in ERA 92 and LS 97. If a spill were to originate from an LA 2 pipeline segment during the summer months, the probability that this spill would contact these land segments could be as great as 15 percent. The probability that a spill from LA 3 would contact the Jones Island group would range from 1 percent to as high as 12 percent. Likewise, for PL 2, the range would be from 3 percent to as high as 12 percent.

Risk Assessment From Prior ITRs

In previous ITRs, we used a risk assessment method that considered oil spill probability estimates for two sites (Northstar and Liberty), oil spill trajectory models, and a polar bear distribution model based on location of satellite-collared females during September and October (68 FR 66744, November 28, 2003; 71 FR 43926, August 2, 2006; 76 FR 47010, August 3, 2011; and 81 FR 52275, August 5, 2016). To support the analysis for this action, we reviewed the previous analysis and used the data to compare the potential effects of a large oil spill in a nearshore production facility (less than 5 mi), such as Liberty, and a facility located further offshore, such as Northstar. Even though the risk assessment of 2006 did not specifically model spills from the Oooguruk or Nikaitchuq sites, we believe it was reasonable to assume that the analysis for Liberty and indirectly, Northstar, adequately reflected the potential impacts likely to occur from an oil spill at either of these additional locations due to the similarity in the nearshore locations.

Methodology of Prior Risk Assessment

The first step of the risk assessment analysis was to examine oil spill probabilities at offshore production sites for the summer (July–October) and winter (November–June) seasons based on information developed for the original Northstar and Liberty EISs. We assumed that one large spill occurred during the 5-year period covered by the regulations. A detailed description of the methodology can be found at 71 FR

43926 (August 2, 2006). The second step in the risk assessment was to estimate the number of polar bears that could be impacted by a large spill. All modeled polar bear grid cell locations that were intersected by one or more cells of a rasterized spill path (a modeled group of hundreds of oil particles forming a trajectory and pushed by winds and currents and impeded by ice) were considered ''oiled'' by a spill. For purposes of the analysis, if a bear contacted oil, the contact was assumed to be lethal. This analysis involved estimating the distribution of bears that could be in the area and overlapping polar bear distributions and seasonal aggregations with oil spill trajectories. The trajectories previously calculated for Northstar and Liberty sites were used. The trajectories for Northstar and Liberty were provided by the BOEM and were reported in Amstrup et al. (2006a). BOEM estimated probable sizes of oil spills from a pinhole leak to a rupture in the transportation pipeline. These spill sizes ranged from a minimum of 125 to a catastrophic release event of 5,912 bbl. Researchers set the size of the modeled spill at the scenario of 5,912 bbl caused by a pinhole or small leak for 60 days under ice without detection.

The second step of the risk assessment analysis incorporated polar bear densities overlapped with the oil spill trajectories. To accomplish this, in 2004, USGS completed an analysis investigating the potential effects of hypothetical oil spills on polar bears. Movement and distribution information were derived from radio and satellite locations of collared adult females. Density estimates were used to determine the distribution of polar bears in the Beaufort Sea. Researchers then created a grid system centered over the Northstar production island and the Liberty site to estimate the number of bears expected to occur within each 1-km^2 grid cell. Each of the simulated oil spills were overlaid with the polar bear distribution grid. Finally, the likelihood of occurrence of bears oiled during the duration of the 5-year ITRs was estimated. This likelihood was calculated by multiplying the number of polar bears oiled by the spill by the percentage of time bears were at risk for each period of the year.

In summary, the maximum numbers of bears potentially oiled by a 5,912-bbl spill during the September open-water season from Northstar was 27, and the maximum from Liberty was 23, assuming a large oil spill occurred and no cleanup or mitigation measures took place. Potentially oiled polar bears ranged up to 74 bears with up to 55 bears during October in mixed-ice conditions for Northstar and Liberty, respectively. Median number of bears oiled by the 5,912-bbl spill from the Northstar simulation site in September and October were 3 and 11 bears, respectively. Median numbers of bears oiled from the Liberty simulation site for September and October were 1 and 3 bears, respectively. Variation occurred among oil spill scenarios, resulting from differences in oil spill trajectories among those scenarios and not the result of variation in the estimated bear densities. For example, in October, 75 percent of trajectories from the 5,912-bbl spill affected 20 or fewer polar bears from spills originating at the Northstar simulation site and 9 or fewer bears from spills originating at the Liberty simulation site.

When calculating the probability that a 5,912-bbl spill would oil five or more bears during the annual fall period, we found that oil spills and trajectories were more likely to affect fewer than five bears versus more than five bears. Thus, for Northstar, the chance that a 5,912-bbl oil spill affected (resulting in mortality) 5 or more bears was 1.0–3.4 percent; 10 or more bears was 0.7–2.3 percent; and 20 or more bears was 0.2–0.8 percent. For Liberty, the probability of a spill that would affect 5 or more bears was 0.3–7.4 percent; 10 or more bears, 0.1–0.4 percent; and 20 or more bears, 0.1–0.2 percent.

Discussion of Prior Risk Assessment

Based on the simulations, a nearshore island production site (less than 5 mi from shore) would potentially involve less risk of polar bears being oiled than a facility located farther offshore (greater than 5 mi). For any spill event, seasonality of habitat use by bears will be an important variable in assessing risk to polar bears. During the fall season when a portion of the SBS bear stock aggregate on terrestrial sites and use barrier islands for travel corridors, spill events from nearshore industrial facilities may pose more chance of exposing bears to oil due to its persistence in the nearshore environment. Conversely, during the ice-covered and summer seasons, Industry facilities located farther offshore (greater than 5 mi) may increase the chance of bears being exposed to oil as bears will be associated with the ice habitat.

Conclusion of Risk Assessment

To date, documented oil spill-related impacts in the marine environment to polar bears in the Beaufort Sea by the oil and gas Industry are minimal. No large spills by Industry in the marine environment have occurred in Arctic Alaska. Nevertheless, the possibility of oil spills from Industry activities and the subsequent impacts on polar bears that contact oil remain a major concern.

There has been much discussion about effective techniques for containing, recovering, and cleaning up oil spills in Arctic marine environments, particularly the concern that effective oil spill cleanup during poor weather and broken-ice conditions has not been proven. Given this uncertainty, limiting the likelihood of a large oil spill becomes an even more important consideration. Industry oil spill contingency plans describe methodologies put in place to prevent a spill from occurring. For example, all current offshore production facilities have spill containment systems in place at the well heads. In the event an oil discharge should occur, containment systems are designed to collect the oil before it makes contact with the environment.

With the limited background information available regarding oil spills in the Arctic environment, it is unknown what the outcome of such a spill event would be if one were to occur. For example, polar bears could encounter oil spills during the open-water and ice-covered seasons in offshore or onshore habitat. Although most polar bears in the SBS stock spend a large amount of their time offshore on the pack ice, it is likely that some bears would encounter oil from a large spill that persisted for 30 days or more.

An analysis of the potential effects of a ''worst case discharge'' (WCD) on polar bears in the Chukchi Sea suggested that between 5 and 40 percent of a stock of 2,000 polar bears could be exposed to oil if a WCD occurred (Wilson et al. 2017). A similar analysis has not been conducted for the Beaufort Sea; however, given the extremely low probability (*i.e.,* 0.0001) that an unmitigated WCD event would occur (BOEM 2015, Wilson et al. 2017), the likelihood of such effects on polar bears in the Beaufort Sea is extremely low.

Although the extent of impacts from a large oil spill would depend on the size, location, and timing of spills relative to polar bear distributions along with the effectiveness of spill response and cleanup efforts, under some scenarios, stock-level impacts could be expected. A large spill originating from a marine oil platform could have significant impacts on polar bears if an oil spill contacted an aggregation of polar bears. Likewise, a spill occurring during the broken-ice period could significantly impact the SBS polar bear stock in part because polar bears may be more active during this season.

If an offshore oil spill contaminated numerous bears, a potentially significant impact to the SBS stock could result. This effect would be magnified in and around areas of polar bear aggregations. Bears could also be affected indirectly either by food contamination or by chronic lasting effects caused by exposure to oil. During the 5-year period of these regulations, however, the chance of a large spill occurring is low.

While there is uncertainty in the analysis, certain factors must align for polar bears to be impacted by a large oil spill occurring in the marine environment. First, a large spill must occur. Second, the large spill must contaminate areas where bears may be located. Third, polar bears must be seasonally distributed within the affected region when the oil is present. Assuming a large spill occurs, BOEM's OSRA estimated that there is up to a 6 percent chance that a large spill from the analyzed sites would contact Cross Island (ERA 96) within 360 days, as much as a 12 percent chance that it would contact Barter Island and/or the coast of the ANWR (ERA 95 and 100, LS 107, and GLS 166), and up to a 15 percent chance that an oil spill would contact the coast near Utqigvik (ERA 55, LS 85) during the summer time period. Data from polar bear coastal surveys indicate that polar bears are unevenly and seasonally distributed along the coastal areas of the Beaufort Sea ITR region. Seasonally, only a portion of the SBS stock utilizes the coastline between the Alaska-Canada border and Utqiagvik and only a portion of those bears could be in the oil-spill-affected region.

As a result of the information considered here, the Service concludes that the likelihood of an offshore spill from an offshore production facility in the next 5 years is low. Moreover, in the unlikely event of a large spill, the likelihood that spills would contaminate areas occupied by large numbers of bears is low. While individual bears could be negatively affected by a spill, the potential for a stock-level effect is low unless the spill contacted an area where large numbers of polar bears were gathered. Known polar bear aggregations tend to be seasonal during the fall, further minimizing the potential of a spill to impact the stock. Therefore, we conclude that the likelihood of a large spill occurring is low, but if a large spill does occur, the likelihood that it would contaminate areas occupied by large numbers of polar bears is also low. If a large spill does occur, we conclude that only small numbers of polar bears are likely to be affected, though some bears may be killed, and there would be only a negligible impact to the SBS stock.

Take Estimates for Pacific Walruses and Polar Bears

Small Numbers Determinations and Findings

The following analysis concludes that only small numbers of walruses and polar bears are likely to be subjected to take incidental to the described Industry activities relative to their respective stocks. For our small numbers determination, we consider whether the estimated number of marine mammals to be subjected to incidental take is small relative to the population size of the species or stock.

1. The estimated number of walruses and polar bears that will be harassed by Industry activity is small relative to the number of animals in their stocks.

As stated previously, walruses are extralimital in the Beaufort Sea with nearly the entire walrus population found in the Chukchi and Bering Seas. Industry monitoring reports have observed no more than 38 walruses between 1995 and 2015, with only a few observed instances of disturbance to those walruses (AES Alaska 2015, USFWS unpublished data). Between those years, Industry walrus observations in the Beaufort Sea ITR region averaged approximately two walruses per year, although the actual observations were of a single or two animals, often separated by several years. At most, only a tiny fraction of the Pacific walrus population—which is comprised of hundreds of thousands of animals—may be found in areas potentially affected by AOGA's specified activities. We do not anticipate that seasonal movements of a few walruses into the Beaufort Sea will significantly increase over the 5-year period of this ITR. The estimated take of 15 Pacific walruses per year from a population numbering approximately 283,213 animals represents 0.005 percent of that population. We therefore find that the Industry activities specified in AOGA's Request would result in only a small number of incidental harassments of walruses.

The Beaufort Sea ITR region is completely within the range of the SBS stock of polar bears, and during some portions of the year polar bears can be frequently encountered by Industry. From 2014 through 2018, Industry made 1,166 reports of polar bears comprising 1,698 bears. However, when we evaluated the effects upon the 1,698 bears observed, we found that 84 percent (1,434) did not result in take. Over those 5 years, Level B harassments of polar bears totaled 264, approximately 15.5 percent of the observed bears. No other forms of take or harassment were observed. Annually an average of 340 polar bears were observed during Industry activities. The number of Level B harassment events has averaged 53 per year from 2014 to 2018. We conclude that over the 5-year period of this ITR, Industry activities will result in a similarly small number of incidental harassments of polar bears, and that those events will be similarly limited to Level B harassment.

Based on this information derived from Industry observations, along with the results of the Service's own predictive modeling analysis described above, we estimate that there will be no more than 443 Level B harassment takes of polar bears during the 5-year period of this ITR, with no more than 92 occurring within a single year. Conservatively assuming that each estimates take will accrue to a different individual polar bear, we note that take of 92 animals is 10.14 percent of the best available estimate of the current stock size of 907 animals in the Southern Beaufort Sea stock (Bromaghin et al. 2015, Atwood et al. 2020) ($(92 \div 907) \times 100 \approx 10.14$), and find that this proportion represents a ''small number'' of polar bears of that stock. The incidental Level B harassment of no more than 92 polar bears each year is unlikely to lead to significant consequences for the health, reproduction, or survival of affected animals. All takes are anticipated to be incidental Level B harassment involving short-term and temporary changes in bear behavior. The required mitigation and monitoring measures described in the regulations are expected to prevent any lethal or injurious takes.

2. Within the specified geographical region, the area of Industry activity is expected to be small relative to the range of walruses and polar bears.

Walruses and polar bears range well beyond the boundaries of the Beaufort Sea ITR region. As such, the ITR region itself represents only a subset of the potential area in which these species may occur. Further, only seven percent of the ITR area (518,800 ha of 7.9 million ha) is estimated to be impacted by the proposed Industry activities, even accounting for a disturbance zone surrounding industrial facility and transit routes. Thus, the Service concludes that the area of Industry activity will be relatively small compared to the range of walruses and polar bears.

Conclusion

We expect that only small numbers of Pacific walruses and SBS polar bears stocks would be taken by the Industry activities specified in AOGA's Request because: (1) Walruses are extralimital in the Beaufort Sea and SBS polar bears are widely distributed throughout their expansive range, which encompasses areas beyond the Beaufort Sea ITR region, meaning only a small proportion of the walrus or polar bear stocks will occur in the areas where Industry activities will occur; and (2) the estimated number of walruses and polar bears that could be impacted by the specified activities is small relative the size of the species (walruses) or stock (polar bears).

Negligible Impacts Determination and Finding

Based on the best scientific information available, the results of Industry monitoring data from the previous ITRs, the review of the information generated by the listing of the polar bear as a threatened species and the designation of polar bear critical habitat, the results of our modeling assessments, and the status of the species and stocks, we find that the incidental take we have estimated to occur and authorize through this ITR will have no more than a negligible impact on walruses and polar bears. We do not expect that the total of these disturbances will individually or collectively affect rates of recruitment or survival for walruses or polar bears. Factors considered in our negligible impacts determination include:

1. The behavior and distribution of walruses and polar bears in areas that overlap with Industry activities are expected to limit interactions of walruses and polar bears with those activities.

The distribution and habitat use patterns of walruses and polar bears indicate that relatively few animals will occur in the proposed areas of Industry activity at any particular time, and therefore, few animals are likely to be affected. As discussed previously, only small numbers of walruses are likely to be found in the Beaufort Sea where and when offshore Industry activities are proposed. Likewise, SBS polar bears are widely distributed across a range that is much greater than the geographic scope of the ITR, are most often closely associated with pack ice, and are unlikely to interact with the open water industrial activities specified in AOGA's Request, much less the majority of activities that would occur onshore.

2. The predicted effects of Industry activities on walruses and polar bears will be incidental nonlethal, temporary takes of animals.

The documented impacts of previous Industry activities on walruses and polar bears, taking into consideration cumulative effects, suggests that the types of activities analyzed for this ITR will have minimal effects and will be short-term, temporary behavioral changes. The vast majority of reported polar bear observations have been of polar bears moving through the Beaufort Sea ITR region, undisturbed by the Industry activity.

3. The footprint of the proposed Industry activities is expected to be small relative to the range of the walrus and polar bear stocks.

The relatively small area of Industry activity compared to the ranges of walruses and polar bears will reduce the potential of their exposure to and disturbance from Industry activities.

4. The type of harassment that is estimated is not expected to have effects on annual rates of recruitment of survival.

The Service does not anticipate any lethal or injurious take that would remove individual polar bears or Pacific walruses from the population or prevent their successful reproduction. In fact, the majority of the Service's model runs result in no serious injury Level A harassment or lethal takes and the median of the model runs is 0.0. Level B harassment events lead only to short-term, non-injurious behavioral disturbances that do not reduce the affected animals' probability of surviving or reproducing. These disturbances would not, therefore, affect the rates of recruitment or survival for the walrus and polar bear stocks. These regulations do not authorize lethal take, and we do not anticipate any lethal take will occur.

5. Mitigation measures will limit potential effects of Industry activities.

Under this regulation, holders of an LOA will be required to adopt monitoring requirements and mitigation measures designed to reduce the potential impacts of their operations on walruses and polar bears. Seasonal restrictions, early detection monitoring programs, den detection surveys for polar bears, and adaptive mitigation and management responses based on real-time monitoring information (described in these regulations) will be used to avoid or minimize interactions with walruses and polar bears and, therefore, limit potential Industry disturbance of these animals.

In making this finding, we considered the following: The distribution of the species; the biological characteristics of the species; the nature of Industry activities; the potential effects of Industry activities and potential oil spills on the species; the probability of oil spills occurring; the documented impacts of Industry activities on the species, taking into consideration cumulative effects; the potential impacts of climate change, where both walruses and polar bears can potentially be displaced from preferred habitat; mitigation measures designed to minimize Industry impacts through adaptive management; and other data provided by Industry monitoring programs in the Beaufort and Chukchi Seas.

We also considered the specific Congressional direction in balancing the potential for a significant impact with the likelihood of that event occurring. The Service has previously explained that Congressional direction that justifies balancing probabilities with impacts follows:

> If potential effects of a specified activity are conjectural or speculative, a finding of negligible impact may be appropriate. A finding of negligible impact may also be appropriate if the probability of occurrence is low but the potential effects may be significant. In this case, the probability of occurrence of impacts must be balanced with the potential severity of harm to the species or stock when determining negligible impact. In applying this balancing test, the Service will thoroughly evaluate the risks involved and the potential impacts on marine mammal populations. Such determination will be made based on the best available scientific information (53 FR 8474, March 15, 1988; accord 132 Cong. Rec. S 16305 (October. 15, 1986)).

We reviewed the effects of the oil and gas Industry activities on walruses and polar bears, including impacts from surface interactions, aircraft overflights, maritime activities, and oil spills. Based on our review of these potential impacts, past LOA monitoring reports, and the biology and natural history of walrus and polar bear, we conclude that any incidental take reasonably likely to occur as a result of projected activities will be limited to short term behavioral disturbances that would not affect the rates of recruitment or survival for the walrus and polar bear stocks. This regulation does not authorize lethal take, and we do not anticipate any lethal take will occur.

The probability of an oil spill that will cause significant impacts to walruses and polar bears appears extremely low. We have included information from both offshore and onshore projects in our oil spill analysis. We have analyzed the likelihood of a marine oil spill of the magnitude necessary to lethally take a

significant number of polar bears for offshore projects and, through a risk assessment analysis, found that it is unlikely that there will be any lethal take associated with a release of oil. In the unlikely event of a catastrophic spill, we will take immediate action to minimize the impacts to these species and reconsider the appropriateness of authorizations for incidental taking through section 101(a)(5)(A) of the MMPA.

We have evaluated climate change regarding walruses and polar bears. Climate change is a global phenomenon and was considered as the overall driver of effects that could alter walrus and polar bear habitat and behavior. Although climate change is a pressing conservation issue for walruses and polar bears, we have concluded that the authorized taking of walruses and polar bears during the activities proposed by Industry during this 5-year rule will not adversely impact the survival of these species and will have no more than negligible effects.

Conclusion

We find that the impacts of these specified activities cannot be reasonably expected to, and are not reasonably likely to, adversely affect Pacific walrus or SBS polar bears through effects on annual rates of recruitment or survival. We therefore find that the total of the taking estimated above and authorized by this ITR will have a negligible impact on Pacific walrus and SBS polar bears. These regulations do not authorize lethal take, and we do not anticipate that any lethal take will occur.

Least Practicable Adverse Impacts

We evaluated the practicability and effectiveness of mitigation measures based on the nature, scope, and timing of Industry activities; the best available scientific information; and monitoring data during Industry activities in the specified geographic region. We have determined that the mitigation measures included within AOGA's Request—plus one additional mitigation measure noted below—will ensure the least practicable adverse impacts on polar bears and Pacific walruses (AOGA 2021).

AOGA's initial request reflected the mitigation measures identified in prior Beaufort Sea ITRs as necessary to effect the least practicable adverse impact on Pacific walrus and SBS polar bears. The Service also collaborated extensively with AOGA concerning prior iterations of its Request in order to identify additional effective and practicable mitigation measures, which AOGA then incorporated into its final Request. Polar bear den surveys before activities begin during the denning season, and the resulting 1.6-km (1-mi) operational exclusion zone around all known polar bear dens and restrictions on the timing and types of activities in the vicinity of dens will ensure that impacts to denning female polar bears and their cubs are minimized during this critical time. In addition to conducting den detection surveys, during seismic operations, AOGA will use advance crews that use denning habitat maps and trained observers to scout for potential denning habitat including deep snow and steep bluffs in order to increase avoidance of these areas. Minimum flight elevations over polar bear areas and flight restrictions around known polar bear dens would reduce the potential for bears to be disturbed by aircraft. Additionally, during certain vessel based operations, or while conducting significant activities along to the coast that could introduce sound into the marine environment, AOGA will use trained protected species observers to alert crews when Pacific walruses or polar bears are in the vicinity. If they observe Pacific walruses or polar bears, they will shut down, reduce, or modify activities as needed to mitigate potential impacts. Protected species observers may also be required by the Service for use during other activities including aircraft operations or surface operations to also reduce potential impacts. Finally, AOGA will implement mitigation measures to prevent the presence and impact of attractants such as the use of wildlife-resistant waste receptacles and enclosing access doors and stairs. These measures will be outlined in polar bear and walrus interaction plans that are developed in coordination with the Service prior to starting activities. Based on the information we currently have regarding den and aircraft disturbance and polar bear attractants, we concluded that the mitigation measures outlined in AOGA's Request (AOGA 2021) and incorporated into this final rule will practically and effectively minimize disturbance from the specified oil and gas activities.

The only additional mitigation measure not already included in AOGA's request but warranted to effect the least practicable adverse impact on polar bears and walruses is the requirement that aircraft operations within the ITR area will maintain an altitude of 1,500 ft above ground level when safe and operationally possible. Whereas AOGA's request committed to fly at such levels under ideal conditions, and the Proposed ITR stated that aircraft ''should'' fly at such levels when safe and operationally possible, this Final Rule replaces the Proposed Rule's use of ''should'' with ''will''. The Service determined that this revision could further reduce the extent to which aircraft are permitted to fly below 1,500 ft above ground level and thus further minimizes potential disturbances to polar bears and walruses while preserving safety and continuity of operations at minimal to no extra cost.

A number of additional mitigation measures were considered but determined not to be practicable means of reducing impacts. These measures are listed below:

- *Required use of helicopters for AIR surveys*—Use of helicopters to survey active dens might actually lead to greater levels of disturbance and take compared to fixed-wing aircraft. Additionally, there have been no published data to indicate increased den detection efficacy of helicopter AIR.
- *Grounding all flights if they must fly below 1,500 feet*—Requiring all aircraft to maintain an altitude of 1,500 ft is not practicable as some necessary operations may require flying below 1,500 ft in order to perform inspections or maintain safety of flight crew.
- *Spatial and temporal restrictions on surface activity*—Some spatial and temporal restrictions of operations were included in the ITR as a result of the Service's collaboration with the applicant, but it was made clear during that process additional restrictions would not be practicable for oil and gas operations based on other regulatory and safety requirements.
- *One mile buffer around all known polar bear denning habitat*—One mile buffer around all known polar bear denning habitat is not practicable as many existing operations occur within denning habitat and it would not be able to shut down all operations based on other regulatory and safety requirements.
- *Restriction of vessel speed to 10 knots or less*—Restricting the speed of all industry vessels to 10 knots or less is not practicable for safe and efficient operations. The Service analyzed take of walruses and polar bears for in-water activities within a 1-mile radius around a vessel at operational vessel speeds. Restricting vessel speeds unnecessarily will result in vessels spending more time in the water and it will increase the likelihood that marine mammals will be exposed to vessel disturbance for a longer period of time.
- *Requirements for pile driving sound mitigation*—Additional mitigation measures to reduce in-water sound were not required as the area of sound propagation would not extend beyond

the impact area for visual disturbance that is already included in the analysis. Therefore, there is no additional mitigative benefit to requiring this measure.

• *Prohibition of driving over high relief areas, embankments, or stream and river crossings*—While the denning habitat must be considered in tundra travel activities, complete prohibition of travel across such areas is not practicable because it would preclude necessary access to various operational areas and pose potential safety concerns. Moreover, not all high relief areas, embankments, and stream and river crossing constitute suitable polar bear denning habitat.

• *Use of a broader definition of ''denning habitat'' for operational offsets*—There is no available data to support broadening the defining features of denning habitat beyond that established by USGS. Such a redefinition would cause an increase in the area surveyed for maternal dens and increase potential harassment of bears on the surface.

• *Establishment of corridors for sow and cub transit to the sea ice*—As there is no data to support the existence of natural transit corridors to the sea ice, establishment of corridors in the ITR area would be highly speculative. Therefore, there would be no mitigative benefit realized by their establishment.

• *Requirement of third-party neutral marine mammal observers*—It is often not practicable to hire third-party marine mammal observers due to operational constraints. Additional crew may require additional transit vehicles, which could increase disturbance.

• *Require all activities to cease if a polar bear or walrus is injured or killed until an investigation is completed*—The Service has incorporated into this rule reporting requirements for all polar bear and Pacific walrus interactions. While it may aid in any subsequent investigation, ceasing activities in an active oil field may not be practicable or safe in certain circumstances, and thus will not be mandated.

• *Require use of den detection dogs*—It is not practicable to require scent trained dogs to detect dens due to the large spatial extent that would need to be surveyed each year.

• *Require the use of handheld or vehicle-mounted FLIR*—The efficacy rates for AIR has been found to be four times more likely to detect dens versus ground-based FLIR (handheld or vehicle-mounted FLIR) due to impacts of blowing snow on detection. While use of handheld or vehicle-mounted FLIR could increase the potential of detecting active dens in some circumstances, in other circumstances these potential benefits could be outweighed by the additional disturbances created by increasing vehicle use or human presence in the vicinity of dens. The safety of personnel tasked to prolong their presence in such areas is also an important consideration. The Service therefore finds that use of such techniques should remain at the discretion of operators on a case-by-case basis.

Impacts on Subsistence Uses

We based our findings on past experience, requirements concerning community consultations through the Plan of Cooperation (POC) process, the limited anticipated overlap of hunting areas and Industry projects, the best scientific information available, anticipated 5-year effects of Industry activities on subsistence hunting, and the results of monitoring data and the Service's Marking, Tagging, and Reporting Program. Through these data, we find that any incidental harassment that may result from oil and gas exploration, development, and production activities in the specified geographic region will not have an unmitigable adverse impact on the availability of walruses and polar bears for taking for subsistence uses during the regulatory timeframe.

While walruses and polar bears represent a small portion, in terms of the number of animals, of the total subsistence harvest for the communities of Utqiagvik, Nuiqsut, and Kaktovik, the harvest of these species is important to Alaska Natives. Prior to receipt of an LOA, Industry must provide evidence to us that community consultations have occurred or that an adequate POC has been presented to the subsistence communities. Industry will be required to contact subsistence communities that may be affected by its activities to discuss potential conflicts caused by location, timing, and methods of proposed operations. Industry must make reasonable efforts to ensure that activities do not interfere with subsistence hunting and that adverse effects on the availability of walruses and polar bear are minimized. Although multiple meetings for multiple projects from numerous operators have already taken place, no official concerns have been voiced by the Alaska Native communities regarding Industry activities limiting availability of walruses or polar bears for subsistence uses. However, should such a concern be voiced as Industry continues to reach out to the Alaska Native communities, development of POCs, which must identify measures to minimize any adverse effects, will be required. The POC will ensure that oil and gas activities will not have an unmitigable adverse impact on the availability of the species or stock for subsistence uses. This POC must provide the procedures addressing how Industry will work with the affected Alaska Native communities and what actions will be taken to avoid interference with subsistence hunting of walruses and polar bears, as warranted.

The Service has not received any reports and is aware of no information that indicates that walruses or polar bears are being or will be deflected from hunting areas or impacted in any way that diminishes their availability for subsistence use by the expected level of oil and gas activity. If there is evidence during the 5-year period of the regulations that oil and gas activities are affecting the availability of walruses or polar bears for take for subsistence uses, we will reevaluate our findings regarding permissible limits of take and the measures required to ensure continued subsistence hunting opportunities.

Monitoring and Reporting

The purpose of monitoring requirements is to assess the effects of industrial activities on walruses and polar bears, ensure that the number of takes and the effects of taking are consistent with that anticipated in the ITR, and detect any unanticipated effects on the species or stocks. Monitoring plans document when and how bears and walruses are encountered, the number of bears and walruses, and their behavior during the encounter. This information allows the Service to measure encounter rates and trends of walrus and polar bear activity in the industrial areas (such as numbers and gender, activity, seasonal use) and to estimate numbers of animals potentially affected by Industry. Monitoring plans are site-specific, dependent on the proximity of the activity to important habitat areas, such as den sites, travel corridors, and food sources; however, Industry is required to report all sightings of walruses and polar bears. To the extent possible, monitors will record group size, age, sex, reaction, duration of interaction, and closest approach to Industry onshore. Activities within the specified geographic region may incorporate daily watch logs as well, which record 24-hour animal observations throughout the duration of the project. Polar bear monitors will be incorporated into the monitoring plan if bears are known to frequent the area or known polar bear dens are present in the area. At offshore Industry sites, systematic monitoring

protocols will be implemented to statistically monitor observation trends of walruses or polar bears in the nearshore areas where they usually occur.

Monitoring activities will be summarized and reported in a formal report each year. The applicant must submit an annual monitoring and reporting plan at least 90 days prior to the initiation of a proposed activity, and the applicant must submit a final monitoring report to us no later than 90 days after the expiration of the LOA. We base each year's monitoring objective on the previous year's monitoring results.

We require an approved plan for monitoring and reporting the effects of oil and gas Industry exploration, development, and production activities on polar bears and walruses prior to issuance of an LOA. Since production activities are continuous and long term, upon approval, LOAs and their required monitoring and reporting plans will be issued for the life of the activity or until the expiration of the regulations, whichever occurs first. Each year, prior to January 15, we will require that the operator submit development and production activity monitoring results of the previous year's activity. We require approval of the monitoring results for continued operation under the LOA.

We find that this regulation will establish monitoring and reporting requirements to evaluate the potential impacts of planned activities and to ensure that the effects of the activities remain consistent with the rest of the findings.

Summary of and Response to Comments and Recommendations

Response to Comments

The Service published a proposed rule in the **Federal Register** (FR) on June 1, 2021, with a 30-day period seeking comments on both the proposed ITR and the draft EA (86 FR 79082). The comment period closed on July 1, 2021. The Service received 30,271 comments. Comments were received from two Federal agencies, the Marine Mammal Commission, the State of Alaska, the North Slope Borough, various trade and environmental organizations, and interested members of the public.

We reviewed all comments, which are part of the docket for this ITR, for substantive issues, new information, and recommendations regarding this ITR and EA. The Service used ''DiscoverText'' [1] to aggregate the comments submitted by the public. The Service determined that of the comments received, 30,251, aggregated and submitted by the Center for Biological Diversity, consisted of comments all of which expressed opposition to the promulgation of the regulation. All 30,251 of these comments either repeated, summarized, or provided edits to a standardized message. The Service notes that these modified form letters provided no new information or specific comments but rather brief to lengthy statements expressing the writer's general opposition to the ITR.

The comments are aggregated by subject matter, summarized and addressed below, and changes have been incorporated into the final rule and final EA as appropriate. A summary of the changes to this final ITR from the proposed ITR is found in the preamble section entitled, Summary of Changes from the Proposed Rule.

Response to Comments

MMPA Requirements

Comment 1: One commenter suggested that the Service's definition of harassment does not consider the ''potential'' to disrupt biologically important behaviors, which results in an underestimation of the amount of take from activities.

Response: The Service acknowledges that the definitions of harassment relevant to AOGA's specified activities are those found at 16 U.S.C. 1362(18)(A)(i)–(ii). These definitions are cited in the ITR and were employed in the Service's analysis. The Service disagrees with the commenter's assertion that the Service misapplied these definitions in the ITR. The ITR language quoted by the comment is a partial quote that is not portrayed in appropriate context. The Service stands by its assumption that not all minor changes in behavior (*i.e.,* ''disturbances'') are of a type that can result in harassment, even Level B harassment, because they simply would not disrupt natural behavioral patterns. By way of a simple example, where a polar bear perceived noise from an industrial source located several miles away, the bear could potentially manifest a ''disturbance'' by briefly pausing travel and/or looking toward the noise source, but it would quickly resume what it was doing a moment prior, without any disruption to its pattern of natural behavior. That said, where the noise source is sufficiently loud or close to the polar bear such that the polar bear may flee, express stress-related behavior, abandon a hunt, find itself unable to rest for long periods, or react in one of the numerous other manners cited by the ITR as indicative of a disruption of natural behavioral patterns, the Service assumes that a take by Level B harassment occurs.

Meanwhile, the Service disagrees with the commenter's apparent suggestion to use the most sensitive individual (an ''outlier'' in statistical terms) in the SBS population as the basis for all of its modeling assumptions. Doing so would ignore the best available scientific evidence about how the vast majority of polar bears react to industrial stimuli, effectively replace the implementing regulations' use of the terms ''likely'' and ''anticipated'' with the term ''possible'' (See 50 CFR 18.27(d)), result in vast overestimations of take, and fail to reflect what the Service or any other objective party could reasonably anticipate occurring. When conducting complex acoustic modeling of potential marine mammal responses to industrial stimuli, one must necessarily make a series of reasonable assumptions (including development and application of acoustic thresholds) in order to evaluate and quantify the potential for harassment. The Service's general approach and assumptions here are analogous to those typically utilized by the National Marine Fisheries Service (NMFS) when assessing the potential for anthropogenic noise to harass marine mammals.

While it is possible that some animals do in fact experience disruption of behavioral patterns upon exposure to intermittent sounds at received levels less than [the 160dB acoustic threshold used by NMFS], this is not in and of itself adequate justification for using a lower threshold. Implicit in the use of a step function for quantifying Level B harassment is the realistic assumption, due to behavioral context and other factors, that some animals exposed to received levels below the threshold will in fact experience harassment, while others exposed to levels above the threshold will not. The Service reiterates two key concepts underpinning NMFS's modeling approach and comment response—that modeling assumptions must be realistic as opposed to based on outliers, and that not all disturbances lead to disruption of behavioral patterns and Level B harassment.

Comment 2: One commenter suggested that the Service acknowledges a marine mammal's movement away from an area as take by Level B harassment, but they do not account for this movement in their take estimates.

[1] The use of DiscoverText does not convey or imply that the Service directly or indirectly endorses any product or service provided.

Response: We disagree. As a nomadic species, any assumptions of an individual polar bear's intent to inhabit a specific location would be arbitrary. Included in our estimates of takes by level B harassment are instances when a polar bear changes course and moves in a different direction due to human interaction. However, the Service does not consider only ''increased vigilance'' to be a form of Level B harassment, because increased awareness of potential hazards in an animal's environment does not constitute a disruption of biologically significant behaviors as defined in the MMPA. Further, the Service does not classify a lower probability of denning near industrial infrastructure as a form of Level B harassment. We explain in the proposed rule that denning habitat adjacent to industrial activity has not been removed as a potential denning location. This is evidenced by our use of a probability distribution to determine potential offsets from active industrial sites when placing simulated dens, as opposed to a strict rule of simulating dens a fixed distance away from industry. We include the potential impact from new oil and gas infrastructure when simulating dens during our denning analysis as well.

Comment 3: One commenter suggested that the Service should reevaluate their determinations and either deny the Request to issue an authorization or issue a revised proposed ITR after addressing public comments before promulgating the ITR.

Response: The Service disagrees. The ITR includes a thorough and robust analysis based on detailed descriptions from the applicant of specified activities and the best available science. The Service has reasonably determined that the taking associated with AOGA's specified activities meets all applicable MMPA standards and will therefore issue the requested ITR, subject to appropriate conditions, pursuant to its statutory directive. There are no significant changes to AOGA's Request or the Service's assumptions, or analysis that would require publishing a revised proposed ITR.

Comment 4: Commenters suggested that the Service is applying new and unreasonable interpretation of ''small numbers'' and should define their small numbers determination as well as explain why the Service anticipates an increase in harassment during this 5-year regulation period compared to the previous 5-year regulation period.

Response: The Service's ''small numbers'' determination is consistent with applicable law, policy, and longstanding practice. There are several considerations relevant to the Service's ''small numbers'' standard, but the number of takes estimated in prior regulatory processes is not one of them. The SBS population estimate, calculated by USGS in 2020, is calculated using a number of annual metrics, including annual survival probabilities, annual number of dens, and annual denning success. The resulting value is an estimate of the number of individuals in the population in any given contemporary year. Appropriately, the Service has divided annual take estimates by the annual population estimate, to calculate a percentage of the population potentially taken for its small numbers determination.

The Service has explained at length the quantitative methods that have been used to estimate the number of Level B harassment events projected in the proposed ITR.

Comment 5: One commenter suggested that the Service combined the small numbers determination with the negligible impact determination, and these determinations should be addressed separately.

Response: The Service rendered separate determinations for ''small numbers'' and ''negligible impact'' based on the distinct considerations relevant to each standard. It did not ''conflate'' these findings. This was explained in the proposed rule and remains true in the Final ITR.

Comment 6: One commenter suggested that the Service's small number determination is inconsistent with the number of takes by Level B harassment anticipated for SBS polar bears and that polar bears repeatedly harassed should be considered in the Service's determination.

Response: The potential that individual polar bears could experience multiple incidents of Level B harassment was acknowledged and accounted for in this analysis. The effects of each incident of Level B harassment (as opposed to more severe forms of take) are inherently limited and short term, and the Service does not anticipate that the effects of multiple Level B harassments of the same polar bear would aggregate or combine with each other in a manner that causes anything greater than Level B harassment. Per the MMPA, ''small numbers'' refers to the number of animals incidentally taken, not the number of incidental takes as the comment here suggests. That said, because the Service could not reliably calculate how many of the anticipated Level B harassments would accrue to the same animals, it conservatively assumed for the purposes of its ''small numbers'' determination that each of the anticipated takes would accrue to a different animal.

Comment 7: Commenters suggested that the Service ignores the potential negligible impact implications for a skew within the model used to analyze denning impacts and the potential for take by Level A harassment.

Response: The ITR does not authorize any Level A harassment or lethal take of polar bears (nor did AOGA request authorization for such take). The Service did employ a complex model to analyze the probability that harassing a denning or post-emergent bear could result in lethal take of her cubs. We provided all of the output data from the simulations as part of the proposed rule to be transparent and allow commenters to see for themselves where take comes from and why there is such a significant skew in the data on the number of estimated lethal take or serious take by Level A harassment. The reason for the skew is because the majority (*i.e.,* 54%) of model iterations estimated 0 serious takes by Level A harassment or lethal takes occurring annually. We disagree with the commenter that the skew is caused by a combination of the number of dens and the number of bears in dens that are disturbed. In reality, the skew is the result of the high number of iterations where 0 take is estimated. It is true that the tail of the distribution is a function of the number of dens disturbed and the number of cubs in those dens. We disagree that the Service is ignoring the potential for take by Level A harassment. We presented all of the output of the model to be as transparent as possible, and to fully assess the potential that estimated and authorized Level B harassment of a denning or post-emergent sow could result in abandonment of her cubs. We also disagree that the mean is the appropriate metric to consider when estimating the expected level of take associated with the proposed activities. Means are the appropriate measure of central tendency when data are normally distributed or some other symmetric distribution. In these cases, the mean and median are nearly the same. However, when the data are significantly skewed, as our results are, the median is a more appropriate informative measure of the central tendency in the data.

Comment 8: Commenters suggested that the Service should consider the effects of potential take by Level A harassment and potential lethal take of polar bear cubs for the negligible impact.

Response: The Service has conducted a thorough analysis using detailed

project descriptions from the applicant and quantitative estimates of take developed using the best available science. As is explained in the proposed rule, due to the low (<0.29 for non-serious Level A and ≤0.462 for serious take by Level A harassment/lethal takes) probability of greater than or equal to 1 non-serious or serious injury Level A harassment/lethal take each year of the proposed ITR period, combined with the median of 0.0 for each, we do not estimate the proposed activities will result in non-serious or serious injury Level A harassment or lethal take of polar bears.

The Service is not authorizing any lethal take (or any forms of take other than by Level B harassment). The Service fully considers the probability that the authorized take will adversely affect the species or stock through effects on annual rates of recruitment or survival. 50 CFR 18.27(c).

Comment 9: One commenter suggested that the Service used outdated polar bear survey data for the Service's small number and negligible impact determinations and the Service should use more recent data on the SBS polar bear stock in order to make the small numbers and negligible impact determinations.

Response: The Service is obligated to render its MMPA determinations based on the best available scientific evidence. The most recent population estimate available for the SBS stock of polar bears is contained within a 2020 report from USGS, and this estimate was utilized in the Service's analysis.

Comment 10: One commenter suggested that the Service should conduct further research on the availability of polar bears for subsistence uses.

Response: The Service acknowledges that more studies on the current availability of polar bears for subsistence hunting on the Coastal Plain of Alaska could improve our analysis. However, as discussed in the proposed rule, and reaffirmed in this final rule, the Service has based our determinations on the best information currently available.

Comment 11: One commenter suggested the Service should conduct further research on human-polar bear interactions during oil and gas activities in order to reduce polar bear take during these interactions and to better inform the Service's small numbers and negligible impact determinations.

Response: The Service acknowledges that additional information to better understand human-polar bear interactions and how to avoid, reduce, and mitigate the number of bears taken as a result of conflicts with oil and gas activities would be beneficial. However, as discussed in the proposed rule, and reaffirmed in this final rule, the Service has based our determinations on the best information currently available.

Comment 12: One commenter suggested that the Service should analyze the impacts of incidental takes during previous regulation periods in order to assess cumulative impacts of those previous takes on the SBS polar bear stock and the Service should use this information to inform the Service's small numbers and negligible impact determinations for the current regulation period.

Response: The Service appreciates the concerns raised in this comment. As discussed in the proposed rule, and affirmed in this final rule, the Service requires holders of an LOA to report, as soon as possible, but within 48 hours, all LOA incidents during any Industry activity. The Service, in turn, monitors these reports to ensure the type of take, if any, are consistent with the terms of the LOA. The Service also monitors the cumulative takes reported by all LOA holders to ensure the total number of takes, authorized under an ITR, do not exceed those authorized/estimated. The Service used this information when it considered the environmental baseline and status of the species and when it evaluated the impacts of AOGA's specified activities.

Comment 13: One commenter suggested that the Service should consider including take from other sources not related to oil and gas activities, such as subsistence take and unknown mortality events, as part of the Service's environmental baseline, which is used to estimate take and determine negligible impact.

Response: The Service adequately considered the potential for all forms of take—including take for subsistence uses—as well as natural mortality when conducting its analysis and making its negligible impact finding.

Comment 14: One commenter suggested that the Service should include climate change impacts as part of the Service's analysis to estimate take for the regulation period.

Response: The Service presented a thorough discussion on the baseline conditions for the population, including the potential effects of climate change on polar bears, Pacific walruses, and prey species. The ITR authorizes only Level B harassment of small numbers of the population. Such take would result in only temporary behavioral changes even considering the current baseline stressors experienced by the population due to climate change. No Level A harassment or lethal take is estimated as a result of the proposed activities, and none is authorized by this ITR.

Comment 15: Commenters suggested that the Service should base the Service's small numbers determination on the total estimated take number for the 5-year regulation period instead of the annual take estimates across the 5-year regulation period.

Response: The SBS population estimate, calculated by USGS in 2020, is calculated using a number of annual metrics, including annual survival probabilities, annual number of dens, and annual denning success. The resulting value is an estimate of the number of individuals in the population in any given contemporary year. Appropriately, the Service has divided annual take estimates by the annual population estimate, to calculate a percentage of the population potentially taken for its small numbers determination. This approach best enables the Service to assess whether the number of animals taken is small relative to the species or stock. Consideration of annual estimates tracks with the use of ''each'' in 16 U.S.C. 1371(a)(5)(A)(i) and the use of annual LOAs to authorize the incidental take. Comparing the aggregate number of takes over 5 years with a population estimate specific to 1 year, as commenter suggest doing, is a less suitable comparison. In previous Beaufort Sea ITRs, the Service has always relied on annual estimates based on encounters during previous years and the proportion of those individuals that experienced take by Level B harassment. This ITR differs in that it uses the best available science and additional details associated with each project to more accurately estimate encounters and takes anticipated by the specified activities. The Service's ''small numbers'' determination here is consistent with applicable law, policy, and longstanding practice.

Comment 16: One commenter suggested that the Service should clarify that the scope of the proposed rule is the issuance of the proposed ITR and that the proposed ITR does not authorize proposed activities.

Response: The Service agrees that the proposed action analyzed in the EA is the issuance of an ITR and authorization of incidental take associated with AOGA's specified activities, and not approval of the oil and gas activities themselves. The Service also agrees that the ITR does not authorize intentional take and agrees that oil spills are not a consequence of ITR or the Proposed Action analyzed in the Service's EA.

Comment 17: One commenter suggested that the Service should clarify the activities that exceed the scope of the Service's analysis and determinations and will not be issued an LOA.

Response: The Service has provided language to this final rule that clarifies the activities addressed in this ITR and the incidental take that may be authorized via LOAs.

Comment 18: One commenter suggested that the Service should broaden the list of entities associated with the Request that are able to apply for LOAs.

Response: We agree. This final rule has been revised to clarify what entities may request LOAs under these regulations.

Comment 19: One commenter suggested that the Service's larger take estimate for polar bears compared to the previous ITR's polar bear take estimate and the reduced polar bear population size is inconsistent with the Service's negligible impact determination.

Response: ''Negligible impact'' determinations are based on several considerations, but the number of takes estimated in prior regulatory processes is not one of them. The Service rendered its negligible impact determination here based on the effects of the taking from the activities specified in the pending Request.

Comment 20: Commenters suggested that the Service did not ensure that the proposed activities will have the least adverse impact practicable.

Response: We disagree. As explained in the proposed rule, and affirmed in this final rule, the Service conducted a robust analysis, on the proposed activities and, based on that analysis, prescribed the means that will effect the least practicable adverse impact on Pacific walrus and SBS polar bears, their habitat, and their availability for taking for subsistence use by Alaska Natives.

Comment 21: One commenter suggested that the Service arbitrarily and capriciously underestimated the likelihood of take other than that by Level B harassment to occur during the regulation period.

Response: We disagree. As explained in the proposed rule, and affirmed in this final rule, the Service conducted a robust analysis of the potential effects of AOGA's specified activities. Further, we sought public comment on our analysis, affording interested parties the opportunity to provide new information on our analysis and considered all information provided to the Service prior to finalizing these regulations. The Service's actions are therefore lawful and, in no way, arbitrary and capricious.

Comment 22: One commenter suggested that the Service's analysis of activity impacts was too specific, which exceeds the scope of the ITR, and this approach inappropriately merges the LOA process, which requests authorization for incidental take during specific activities, into the ITR analysis.

Response: The Service acknowledges that it requested and analyzed more detailed information concerning the requestor's specified activities than is typically provided, but maintains that doing so was necessary to rigorously analyze these activities and confirm that applicable MMPA standards are met. The Service's enhanced analytical approach utilized newly-available information and predictive modeling techniques that better account for potential effects to polar bears that may occur but remain beyond observers' capacity to perceive. A comparatively greater degree of specificity concerning the requestors' specified activities was required to (1) ensure that the Service accounted for both observable and unobservable take, and (2) reduce uncertainties about the level, location, and duration of the specified activities and thus limit the use of overly-conservative assumptions that result in inappropriate overestimation of take. The Service conducted this more in-depth analysis at the ITR stage so the results could inform its MMPA-required determinations (*e.g.,* small numbers, negligible impact, no unmitigable adverse impact on availability for subsistence uses, least practicable adverse impact).

Comment 23: One commenter suggested that the Service should remove language that potentially limits which U.S. citizens can apply for LOAs under the ITR.

Response: We disagree. Section 101(5)(A)(i) of the MMPA and the Service's implementing regulations afford requestors with broad discretion in delineating scope of the activities specified in their request. U.S. citizens intending to engage in activities not encompassed by a particular request can submit their own request, which the Service will review accordingly.

The Service acknowledges that under past ITRs we have issued LOAs to entities not specifically named in the request for regulations. This practice was permissible under the applicable ITR.

Comment 24: One commenter suggested that the Service did not provide oil and gas operators not specified in the ITR with a sufficiently advance notice to apply for a separate incidental take authorization without a gap in coverage.

Response: We disagree with the notion that the Service is obligated to inform operators that they will not be covered by an ITR they did not request. The Service does acknowledge that under past ITRs we have issued LOAs to entities not specifically named in the request for regulations. However, the narrower scope of the current request and the Service's ensuing analysis does not allow for that practice. We note that the MMPA and our regulations allow other qualifying companies to request ITRs or IHAs for their activities.

Comment 25: One commenter suggested that the Service should reconsider its small numbers determination based on the estimated number of takes by Level B harassment.

Response: As was stated in the proposed rule, take of 92 animals is 10.14 percent of the best available estimate of the current stock size of 907 animals in the Southern Beaufort Sea stock (Bromaghin et al. 2015, Atwood et al. 2020) ($(92 \div 907) \times 100 \approx 10.14$), and represents a ''small number'' of polar bears of that stock.

Comment 26: One commenter suggested that the Service makes inadequate assumptions and underestimated the number of polar bears that may be taken by Level A and Level B harassment during activities and that the Service should reconsider its small numbers and negligible impact determinations.

Response: The Service's assumptions were reasonable and consistent with the MMPA.

Comment 27: One commenter suggested that the percentage (40%) of SBS polar bear maternal land dens estimated to be exposed to potential take by Level B harassment was inconsistent with the Service's small numbers determination.

Response: As is described under Evaluation of Effects of Specified Activities on Pacific Walruses, Polar Bears, and Prey Species, the Service has estimated less than 3.2 Level B harassment events to denning bears each year as a result of the proposed activities. This does not represent ''40% of all the maternal land dens'' for the SBS stock.

Comment 28: One commenter suggested that the Service should account for harassment of undetected polar bear maternal dens in their take estimates in order to avoid underestimating the number of takes for the regulation period and affecting the Service's small numbers determination.

Response: The Service's analysis properly accounts for the anticipated

number and potential locations of maternal dens and applies reasonable assumptions concerning their rate of detection. The Service disagrees with the notion that it grossly underestimated the number of polar bears that will be taken under the ITR.

Comment 29: A commenter suggested that the Service should consider whether the estimated number of takes exceeds the potential biological removal for the SBS polar bear stock in order to make its negligible impact determination and the Service should also consider other sources of anthropogenic take as part of the Service's baseline to evaluate negligible impacts on the SBS polar bear stock from oil and gas activities.

Response: The only take anticipated and authorized by the Service from AOGA's specified activities is Level B harassment. The Service does not anticipate or authorize any taking that will impair the survival of any polar bears. The Service did not identify any mechanism through which impacts associated with authorized Level B harassment (which are inherently short-term and limited) could interact with impacts from other sources of anthropogenic take such that serious injury or death could result (nor does the commenter establish such possibility).

*Comment 30: C*ommenters suggested that the Service should account for take by Level A harassment for the duration of the 5-year regulation period in order to determine whether there would be more than a negligible impact.

Response: The Service evaluated the probability of take by Level A harassment for each of the 5 years covered by this ITR. In determining whether the authorized take will have a negligible impact on the SBS stock of polar bears, the Service applies the definition in its implementing regulations, which define a negligible impact as an impact resulting from the specific activities that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the stock through effects on annual rates of recruitment or survival. 50 CFR 18.27(c). Not all Level A harassment events affect annual rates of recruitment or survival. Hence the distinction between serious and non-serious take by Level A harassment. The Service estimates a 46% probability of take that is pertinent to the negligible impact standard (*i.e.,* take that results in serious injury of mortality). The probability of harassing denning bears such that lethal take of one or more cubs occurs is appropriately assessed on an annual basis in order to give effect to the term ''annual'' as it appears in these regulations. While the Service is always concerned with any potential for mortality to cubs, it has worked with the applicant to integrate numerous mitigation measures to further reduce the potential for such events, and it does not reasonably expect such events to affect annual rates of recruitment or survival. The Service further notes that its approach to applying the ''negligible impact'' standard here is consistent with the 1-year duration of any LOAs (which actually authorize the incidental take pursuant to the framework established in the ITR) as well as the manner in which the Service applies the ''negligible impact'' standard in the context of IHAs, which would remain available as an alternative approach for requesting and authorizing take were the Service unable to make the requisite determination for this ITR.

Comment 31: One commenter suggested that the Service should clarify the explanations for their small numbers and negligible impact determinations and the consistency of these determinations with their regulations.

Response: The Service reasonably applied the relevant statutory and regulatory standards and not impermissibly relied on any limitations not included in the regulations. Further clarification of these issues is provided in various comment responses.

Comment 32: One commenter suggested that the Service should clarify whether take during activities under the previous ITR (2016–2021) was included in the Service's baseline to evaluate Industry impacts on marine mammals.

Response: Consistent with the MMPA and its implementing regulations, the Service makes its ''negligible impact'' on a request-by-request basis. In other words, it does not aggregate take associated with the current request with take associated with prior authorizations. That said, the Service's ITR and NEPA analyses do consider the current status of the relevant stock or species (here, SBS polar bears), to include any residual impacts caused by prior taking, when rendering its MMPA determinations and NEPA conclusions.

Comment 33: One commenter suggested that the Service should clarify why they do not anticipate take by Level A harassment to occur during Industry activities given the 0.46 probability of take by Level A harassment of a polar bear cub and how the potential for take by Level A harassment will impact the SBS polar bear stock.

Response: The Service applied the relevant statutory and regulatory terms in a reasonable manner and determined for the purpose of applying the ''negligible impact'' standard that the authorized take ''cannot be reasonably expected to, and is not reasonably likely to'' adversely affect the SBS stock of polar bears through effects on annual rates of recruitment or survival. Considering annual probability rates is the most appropriate way to address the applicable regulatory standard, which is expressed in annual terms. And the fact the zero Level A harassment or lethal takes is the most likely result in any given year precludes a reasonable expectation that such take will, in fact, occur. Level A harassment (either non-serious or serious) to bears on the surface is extremely rare within the ITR region. The Service further notes that the mitigative effect of certain measures described in AOGA's request—*i.e.,* avoidance of steep slopes and use of trained observers to clear potential denning areas prior to road construction—could not be reliably quantified and thus integrated into the Service's modelling analysis, but may further reduce the probability of den disturbance.

Comment 34: One commenter suggested that the Service should clarify how the probability of take of polar bears by Level A harassment during industry activities will impact the SBS polar bear stock from reaching or maintaining its optimum sustainable population and whether this impact is consistent with the Service's negligible impact determination.

Response: The Service has conducted a thorough analysis using detailed project descriptions from the applicant and quantitative estimates of take developed using the best available science. As is explained in the proposed rule, due to the low (<0.29 for non-serious Level A and ≤0.462 for serious take by Level A harassment/lethal takes) probability of greater than or equal to 1 non-serious or serious injury take by Level A harassment/lethal take each year of the ITR period, combined with the median of 0.0 for each, we do not estimate the proposed activities will result in non-serious or serious injury take by Level A harassment or lethal take of polar bears.

Comment 35: One commenter suggested that the Service should reevaluate its determinations and either deny the Request to issue an authorization or issue a revised proposed ITR after addressing public comments before promulgating the ITR.

Response: The Service disagrees. The ITR includes a thorough and robust analysis based on detailed descriptions from the applicant of specified activities and the best available science. The Service has found no basis to deny the

Request and statutorily ''shall'' authorize incidental take of marine mammals for specified activities where the requisite MMPA determinations are made. There are no significant changes to AOGA's Request, the Service's assumptions, or analysis that would require publishing a revised proposed ITR.

Comment 36: Commenters suggested that in the EA the Service should account for climate change impacts in order to assess impacts on polar bears and walruses potentially affected by Industry activities, and one commenter suggested the Service clarify impacts from other Industry activities and associated risks and cumulative impacts beyond the 5-year regulation period.

Response: The EA appropriately focuses on the reasonably foreseeable impacts of the Proposed Action, *i.e.,* issuing the ITR. The ITR authorizes the Level B harassment associated with certain oil and gas activities, and does not authorize the oil and gas activities themselves. That said, the EA analyzes reasonably foreseeable impacts in the context of an environmental baseline that includes climate change-related impacts to polar bears and walruses. Climate change-related effects were also considered in the EA's analysis of cumulative impacts. As is explained in the ITR and the EA, the effects of the authorized level B harassment are inherently limited and temporary and are not expected to persist beyond the 5-year period addressed in the ITR.

Comment 37: One commenter suggested that the Service should consider additional factors, such as population trends, increased land use, and increased potential for human-polar bear conflicts, as part of the baseline to determine negligible impacts on polar bears.

Response: We agree with the commenter that changing sea ice conditions have affected and will continue to affect polar bears in the SBS subpopulation in various ways. We disagree, however, that we failed to consider these factors or that all of them are relevant to estimating potential impacts from AOGA's Request. For example, we account for changes in the subpopulation's demographics by using the best available science (*e.g.,* Atwood et al. 2020) to inform the denning impact analysis and for setting the potential biological removal level (PBR). We also account for changes in the spatial distribution of bears (*i.e.,* more bears on land) in both our denning analysis (*i.e.,* Olson et al. 2017) and surface analysis (*i.e.,* Wilson et al. 2017). Many of the other factors listed do not have published or verified relationships with industrial activity, so it's unclear how exactly to incorporate those factors into estimating the effects of industrial activities on polar bear disturbance levels. Even so, this does not mean that the effects are not implicitly accounted for as most of the studies we rely on to parameterize our analysis are based on data collected during the period when population-level effects of sea ice loss have been observed for the SBS (*i.e.,* 2000 onwards). For example, our case study analysis contains a significant number of observations from this period and should thus reflect any changes on how bears respond or are affected by disturbance. Similarly, for our analysis of surface-level interactions, observations come from our LOA database in the period 2014–2018, a period that reflects the potential for increases in encounters between bears and humans and modified polar bear behavior as a result of potential nutritional stress.

Comment 38: One commenter suggested that the Service used an outdated and highly criticized population estimate for SBS polar bears and that the levels of take determined for this population likely reflect an overestimated percentage of the population being impacted by Industry activities.

Response: We do not rely on the results of Bromaghin et al. (2015) for analysis but rather on Atwood et al. (2020). Bromaghin et al. (2015) does not apply just to the U.S. portion of the SBS, and while Atwood et al. (2020) does, it provides evidence that the abundance in that area is similar to that found in Bromaghin et al. (2015), thus providing support for stability in the overall sub-population estimate and, therefore, being no different from that published in Bromaghin et al. Without additional details on how those estimates are biased low, we do not address them, and instead rely on the best available scientific evidence. Currently, Bromaghin et al. (2015) and Atwood et al. (2020) represent the best available science on the status of the SBS subpopulation.

The Service does not calculate ''maximum allowable'' levels of lethal take or take by Level A or Level B harassment. Instead, the Service bases its determinations on the effects of the estimated incidental take from the activities specified in the Request. Here, no lethal take or Level A harassment is anticipated to occur or authorized, and the Level B harassment that is anticipated and authorized meets applicable MMPA standards. The Service is unaware of any information that supports a low bias in the Atwood et al. (2020) estimates.

Comment 39: Commenters suggested that the Service's cautious approach to determine take estimations resulted in overestimating take of polar bears and this overestimation may impact the availability of polar bears for subsistence harvest, which may lead to conflicts between Industry entities and subsistence communities.

Response: The Service disagrees with the commenter's suggestion that the ITR inappropriately overestimated take, may lead to conflict between industry and subsistence communities, and may impact the availability of polar bears for subsistence harvest.

Comment 40: One commenter suggested that the Service should explain how their quantitative evaluation of Industry impacts on polar bears is valid and address the inconsistency with their statement in NPR–A that states that quantitative evaluation of the potential effects of disturbance of polar bears is constrained by various factors.

Response: The Service has worked with AOGA to gather the necessary information on the nature, location, and timing of activities for the quantitative analyses presented in the ITR. The Service's polar bear sighting database was incorporated into the analyses to provide information on abundance, distribution, and response of polar bears within the ITR area. While no projection of effects of future activities is perfect, the Service utilized best available scientific evidence, to include robust and peer-reviewed predictive modeling techniques, to perform a comprehensive analysis of estimated impacts, and to render reasoned determinations.

Comment 41: Commenters suggested that the Service overestimated the number of incidental polar bear takes and that actual instances of polar bear take will be much less over the 5-year regulation period, and requested the Service clarify whether this overestimation of take will affect additional Industry entities seeking take authorizations.

Response: We disagree that the methodology we use leads to an inappropriate overestimate of take. The Service has used best available science to generate quantitative take estimates that represent the total potential take that may occur as a result of the activities included in the applicant's Request. Under the existing and previous ITRs, AOGA was required to survey for dens only along ice road and tundra travel routes. Therefore, the majority of their project area was not surveyed for dens, and, consequently,

their status was not monitored. While additional dens have been observed upon emergence, it is clear that without dedicated observers across the entire project area, it would be impossible to observe the vast majority of denning bears and their response to potential disturbance. This is especially true given the limited light conditions present during the majority of the denning period. Additionally, a large portion of the estimated take would not be observable to Industry. Rode et al. (2018) showed that when bears emerge early from dens, there is a survival consequence to cubs when subsequent observations are made ~100 days post emergence. Thus, the ultimate effects of the disturbance would likely not manifest themselves until after the bears had left the area and are no longer observable by industry. With respect to the Larson et al. (2020) study, we did consider it in our analysis, but the study did not consider the well-documented differences in responses across different denning periods, which we accounted for, and it was unclear what periods their observations were from. Thus, it was unclear what level of bias was present in their response data.

Analyzing the extent—if any—to which this ITR may affect the activities not described in AOGA's Request is beyond the scope of this analysis.

Comment 42: One commenter suggested that the Service should reconsider including intentional takes as part of their data to estimate the number of incidental takes because their inclusion will lead to an overestimation of the number of takes by Level B harassment anticipated for the regulations and ITRs may authorize only incidental, but not intentional, take by harassment.

Response: The Service does not authorize intentional take under this ITR. But as the quoted language indicates, the Service did consider data concerning expected intentional take (*i.e.,* hazing) rates in its analysis of incidental take. It did so because intentional take events are usually preceded by events that qualify as Level B harassment, and it is necessary to account for such instances of incidental take in the larger estimate of incidental take rates. In other words, the Service used intentional take rates as a proxy for the incidental take that generally proceeds intentional take (*i.e.,* hazing) events. The Service recognizes that not all instances of intentional take are preceded by incidental take, but does not have data sufficient to support application of a reliable correction factor, and therefore made this conservative assumption to help ensure that its analysis accounts for all incidental take.

Comment 43: One commenter suggested that the Service overestimated the probability of take of polar bears by Level A harassment during Industry activities because the Service does not account for habituation of polar bears to Industry activities, adaptive mitigation measures, and the variability of received stimuli within a polar bear den.

Response: We disagree with the suggestion that bears choosing to den near industrial infrastructure and activities can be assumed to be indifferent to human activity. In fact, in our review of case studies, we found numerous instances of bears denning adjacent to industrial activities that exhibited disturbance indicative of harassment. We agree that stimuli received by bears in dens is highly variable, as shown in Owen et al. (2020). However, just because a bear detects a signal (as was the scope of Owen et al. 2020) doesn't indicate whether it is likely to respond to that stimuli. Thus, it is not possible to use the data from Owen et al. (2020) to estimate more refined distances at which bears react to different types of activities while denning. Even Owen et al. (2020) acknowledges that a 1-mile no disturbance buffer is still supported by their research. There is currently no study that establishes a curve establishing a relationship between the distance to a potential source of disturbance and the probability that it leads to disturbance. Therefore, we used the best available information to develop response rates of bears within 1-mile of potential exposures. Those response rates incorporate bears that never perceived the activity and therefore never responded, those that perceived the activity but never responded, and those that perceived the activity and responded. We then applied these responses to dens within 1 mile of an activity to determine potential disturbances.

Comment 44: One commenter suggested that the Service should clarify how the estimated number of takes will be evaluated to determine LOA issuance under these regulations.

Response: The Service will issue LOAs in the manner described in its implementing regulations at 50 CFR 18.27(f). The Service does not intend to conduct predictive modeling of the potential effects of the activities described in each request for an LOA. Nor does the Service intend to prosecute recipients of LOAs for unauthorized take that is suggested by modeling but not supported by observations or any other evidence.

Comment 45: One commenter suggested that the Service should consider that the SBS polar bear abundance estimate upon which the Service based its small numbers and negligible impact determinations is biased low.

Response: Bromaghin et al. (2015) does not apply just to the U.S. portion of the SBS and while Atwood et al. (2020) does, it provides evidence that the abundance in that area is similar to that found in Bromaghin et al. (2015), thus providing support for stability in the overall sub-population estimate and, therefore, being no different from that published in Bromaghin et al. Currently Bromaghin et al. (2015) and Atwood et al. (2020) represent the best available science on the status of the SBS subpopulation.

Comment 46: One commenter suggested that the Service should clarify why they used the cited SBS polar bear population estimate for their EA and ITR and discuss whether more recent polar bear population abundance data exist.

Response: The Service used the most current reliable population estimates of SBS polar bears in both its ITR and NEPA analyses. This was not Bromaghin et al. (2015) but rather Atwood et al. (2020). In their assessment, Atwood et al. (2020) did not find any significant differences in the size of the subpopulation between the two studies. The Atwood et al. (2020) study updated Bromaghin et al. (2015) but included additional years of data (through 2016) to provide a population estimate for the year 2015. Based on its ongoing monitoring of studies, observation reports, and related information, the Service believes these estimates continue to reflect a reliable estimate of the current population. In other words, the Service is not aware of any reliable information suggesting that the SBS population of polar bears has significantly declined over the last 6 years such that the 2015 estimate is unreliable, nor has such information been submitted through the public comment process. The population estimate published in Atwood et al. (2020) is currently the best available information for the status of the SBS subpopulation. The Service disagrees with the commenter's unsupported assertion that there is a ''dearth'' of abundance data and a ''great deal of uncertainty in estimating population numbers.''

Comment 47: One commenter suggested that the Service should address how polar bears are impacted by reduced access to their prey as a result of Industry activities and how this

factor was evaluated during take estimations.

Response: The availability of prey was considered in the environmental baseline that informed the Service's analysis of potential effects of AOGA's specified activities and issuing the ITR. The Service does not foresee Level B harassment appreciably reducing polar bears' access to prey.

Comment 48: One commenter suggested that the Service should clarify how serious take by Level A harassment and lethal take were determined in their take estimates.

Response: While the probabilities of serious take by Level A harassment and Lethal takes were separated in Table 7, when summarizing model results in Table 8 these values were reported as a combined result. All necessary MMPA determinations were made using take estimates that combined serious take by Level A harassment and lethal take into the same general category.

Comment 49: One commenter suggested that the Service should clarify the explanation for take by Level A harassment and lethal take probabilities.

Response: As is stated in the ITR, the Service does not estimate the proposed activities will result in non-serious or serious injury take by Level A harassment or lethal take due to the low (<0.29 for non-serious take by Level A harassment and ≤0.462 for serious take by Level A harassment/lethal takes) probability of greater than or equal to 1 non-serious or serious injury Level A harassment/lethal take each year of the ITR period, and a median of 0.0 for each.

Comment 50: Paragraph 1 under the heading ''Level A Harassment'' states: Level A harassment to bears on the surface is extremely rare within the ITR region. From 2012 through 2018, one instance of Level A harassment occurred within the ITR region associated with defense of human life while engaged in non-Industry activity. This statement and its context are unclear, and we suggest clarifying in the final rule.

Response: The referenced instance of Level A harassment represented an intentional take. This ITR process authorizes only incidental Level B harassment. We do not find that further clarification is warranted.

Analysis

Comment 51: One commenter suggested that the Service should systematically collect data on polar bear dens rather than using opportunistic data to assess impacts.

Response: Consistent with is regulations implementing the MMPA, the Service reviewed AOGA's Request using the ''best available scientific evidence.'' See 50 CFR 18.27(d)(3). The Service finds that the monitoring and reporting requirements specified in the ITR are sufficient. The Service will continue to evaluate opportunities for enhanced data collection but the extent to which the Service itself should engage in more systematic data collection is beyond the scope of this analysis.

Comment 52: One commenter suggested that the Service should reevaluate the assumption to estimate take by Level A harassment for denning polar bears.

Response: As was explained in the proposed ITR, the Service employed a set of reasonable assumptions derived from the best available scientific evidence to analyze what would happen if denning bears were disturbed by AOGA's specified activities.

Comment 53: One commenter suggested that the Service should account for the increased risk of predation on polar bear cubs after den emergence as part of the Service's impact assessment for polar bears.

Response: We disagree. We know of no instance or circumstance where a cub, recently leaving the den regardless of circumstances, would be able to successfully resist a predation attack. The only likely predators of young cubs in this environment at this time are other polar bears, wolves, or other large carnivores. Cubs at this age rely on their mothers for protection from predation.

Comment 54: One commenter suggested that the Service should account for the potential lethal take of a polar bear as a result of a defense of human life during a human-polar bear encounter in the Service's negligible impact determination.

Response: Under Section 101(a)(5)(A) of the MMPA, negligible impact determinations consider the effect of the specified activities and the incidental take to be authorized, and not the effects of intentional take described by the commenter. Defense of human life takes are authorized under a separate provision of the Act.

Comment 55: One commenter suggested that the Service should reevaluate Industry impacts on denning polar bears.

Response: The Service has conducted a thorough and robust analysis based on detailed descriptions from the applicant of activities occurring within the specified geographical region and the best available science. All activities within the ITR region that have the potential to impact denning polar bears have been included in this analysis.

Comment 56: One commenter suggested that the Service should consider that estimating the number of polar bear dens for this ITR using historic observations may lead to underestimation due to the increased land use reported for the SBS polar bear stock.

Response: The analysis does take into account the potential for >52 dens to occur in the region. As stated in the text of the document detailing the den simulations (pp. 86 FR 29407–29408, June 1, 2021), we use statistical distributions for each region in the ITR (*i.e.,* NPR–A, Colville to Canning, the 1002 area) to simulate a number of dens in each region during each iteration of the model. Based on how these distributions were parameterized, it is possible to have up to ~102 dens simulated during any given iteration of the model. That is the sum of the upper 95% CI for each of the three regions where dens were simulated. Additionally, the data used in the den simulation portion of the model uses the best available information derived from the most up-to-date den catalogue published by Durner et al. (2020). Olson et al. (2017) shows that in the period 2007–2013 55% of dens occurred on land, and this did not differ from the period of 1996–2006 (*i.e.,* 54.5%). So, our results are consistent with these studies, based on the most recent data, and reflective of what we expect to occur during the five-year period of this ITR.

Comment 57: One commenter suggested that the Service should consider the energetic costs of denning female polar bears relocating to alternative den sites and the associated impacts of these energetic costs on the survival for both mother polar bears and their cubs.

Response: While we agree with the commenter that these types of relationships are conceivable, we are unaware of any research to support or document these claims. Further, these statements are just conjectures, and it's equally feasible that females have sufficient energetic reserves to find a new den site given that they already spend energy scouting for ideal den sites. We are therefore required to use the currently best-available information, which indicates minimal impacts to denning females if forced to find a new den site after being disturbed.

Comment 58: One commenter suggested that the Service should consider whether the number of cubs affected by premature den departure is underestimated.

Response: We disagree with the notion that we have underestimated

such impacts. We use the best available science to address this question. While we agree that there are likely local factors at a den site that could play a role in triggering when bears decide to depart the den site, those relationships have not been established, nor would there be any way to project those conditions to all future denning bears. We use real-world data on den emergence dates and time spent at the den site post-emergence but prior to permanently departing the area. These observations already contain natural variation in the timing of these events, possibly based on the local conditions or the specific attributes of denning females (*e.g.,* nutritional condition). Thus, drawing from these distributions should allow for the level of natural variation to be accounted for in the analysis. While it's true a larger sample size would always be better, polar bears are difficult to study and we must therefore use what we have available. It is also worth mentioning that the sample sizes are not so small as to be unreliable. In fact they were deemed sufficient for inclusion into multiple peer-reviewed studies (*e.g.,* Rode et al. 2014, Smith et al. 2007).

Comment 59: One commenter suggested that the Service should consider the potential impacts of take by Level A harassment that may result from a mother abandoning her cubs in response to disturbance.

Response: The dataset that was used to analyze potential take from surface interactions encompassed all recorded human-polar bear interactions throughout the year, including the months when sows are moving toward the sea ice with cubs of the year. There are no recorded interactions in the 2014–2018 dataset between Industry and these bears that resulted in Level A harassment. The Service has also accounted for these potential interactions when establishing mitigation measures. Under the mitigation measures established in the proposed rule, Industry must survey for maternal polar bear dens, create exclusion zones around known dens, and report all polar bear interactions (including those with sows and cubs) to the Service within 48 hours of the event.

Comment 60: One commenter suggested that the Service should consider the most recent evidence of cub survival and recruitment in the SBS polar bear population as part of their baseline to assess impacts to SBS polar bears.

Response: We agree with the commenter that over the past ~20 years, cub-of-the-year survival in the SBS has been low relative to other subpopulations and is the primary driver of concomitant decreases in abundance. Survival was especially low in the period 2004–2008 (mean = ~0.24), a period of marked population decline, but was relatively higher in the period 2009–2014 (mean = 0.50), the last year for which estimates are available (Atwood et al. 2020).

Comment 61: One commenter suggested that the Service should clarify the explanation for distinguishing lethal take of polar bear cubs if cubs are abandoned before 60 days of age and serious take by Level A harassment of cubs if cubs are abandoned after 60 of age.

Response: We disagree with the commenter that our different treatment of cubs emerging early during the early vs. late denning periods is inappropriate. We used 60 days based on published literature indicating that cubs have developed the basic functions to survive outside of the den by the time they reach ~2 months (60 days) of age. Prior to 60 days, the literature indicates that survival of cubs outside of the den is not possible. Serious Level A harassment is harassment that is likely to result in mortality. Based on the results of Rode et al. (2018), we know that early emergence from the den can lead to survival consequences for cubs. However, it is clear from the results of Rode et al. (2018) that not all cubs die as a result of early emergence (assuming they are >60 days old), thus, there is a different outcome to cubs emerging early during the early denning vs. the late denning periods. Hence, we treated early emergence during the late denning period as a serious Level A harassment because of the potential for a lethal outcome and lethal take for early emergence during the early denning period because of nearly 100% probability of cubs dying then.

Comment 62: One commenter suggested that the Service should use systematically collected survey data that has been peer-reviewed in order to evaluate disturbance impacts to denning polar bears during Industry activities rather than use opportunistic observations of polar bear disturbance during Industry activities.

Response: The case studies include published literature and reports of observations made by Industry and research and provided to USFWS. The published literature includes peer-reviewed literature, including literature by Amstrup (1993), which states that ''10 of 12 polar bears tolerated exposure to exceptional levels of activity'' and ''most bears in this study showed substantial tolerance to activity.'' They also state ''. . . live capture and marking were probably more disruptive to bears than other possible perturbations. Yet recruitment of cubs through the time of emergence from the den and sizes of cubs were not affected.'' In our analysis, we utilized the best available information, which included internal reports and observations, as well as peer-reviewed literature (*e.g.,* Amstrup 1993). Thus, we used past reports to inform our findings, but the reports alone did not provide the basis for our findings as noted in the ''Info Source'' column of the AOGA ITR—Case Studies Summary Table—061621, document ID FWS–R7–ES–2021–0037–0011.

Comment 63: One commenter suggested that the Service should clarify the explanation for not classifying disturbance during early denning that did not result in den abandonment as take by Level A harassment.

Response: The early denning period begins with the birth of cubs and ends 60 days after birth. Because cubs cannot survive outside the den prior to reaching 60 days of age, any exposure during early denning that resulted in an emergence was classified as lethal take. Of the 10 cases in the repeated-exposure category that occurred during the late denning period, 2 resulted in cub mortality; in the other 8 cases, exposures did not result in emergences—the bears remained in their dens until after 13 February, the date that marked the end of the early denning period in cases where cub age was not known. Although possible, no studies have clearly demonstrated latent effects of disturbance on denning bears that did not respond to the disturbance in observable manners. In these eight cases, negative response (*e.g.,* early emergence) were not observed during early denning. The purpose of evaluating these case studies was to inform the probabilities of responses to exposures during different periods. In this case, simulated dens that were exposed to repeated exposures before cubs reached 60 days of age had a 20% probability, on average, of resulting in cub mortality and an 80% probability of remaining in the den until the beginning of the late denning period.

Comment 64: One commenter suggested that the Service should clarify their explanation for the dates assigned to the early denning period.

Response: We used the best available information to inform average parturition date of 15 December. Messier et al. (1994) concluded that a majority of births occurred before or around 15 December as indicated by the drop in activity levels of instrumented females.

Comment 65: One commenter suggested that the Service should collect more extensive followup information on polar bear den disturbance case studies in order to determine whether cubs survived a den disturbance event.

Response: For most of the case studies, we had documentation of only the immediate outcome of the exposure to a disturbance, which was sufficient for determining the immediate outcome. For most cases, there is no documentation of the outcome of the cubs beyond the immediate timeframe of the disturbance. We used the best available information, and it would not be appropriate to assume an outcome in the absence of information.

Comment 66: Several commenters suggested that the Service did not adequately consider the possibility of lethal take or serious injury take by Level A harassment arising from direct contact of a vehicle with a den and varying reactions of denning animals to vehicles in close proximity.

Response: We do not use only Smith et al. (2020) for estimates of AIR efficacy, but rather we include the results from Smith et al. (2020) and Amstrup et al. (2004) in our analysis, as well as a new study on artificial dens (Woodruff and Wilson 2021). We do take into account potential disturbance from ground noise and vibrations from drill and exploration in the form of our disturbance probabilities derived from our review of relevant case studies. While it is true that Amstrup et al. (2004) suggest helicopters may have higher detection rates than fixed-wing aircraft, the average detection rates from Amstrup et al. (2004) do not differ significantly from results obtained with a fixed-wing aircraft (Smith et al. 2020) when accounting for the proportion of dens that are unlikely to be available for detection given snow depth. Additionally, AOGA proposed using only fixed-wing aircraft, so that is what we considered in our analysis. The EA serves to assess the impacts of the Federal action of issuing the ITR. The ITR does not authorize the specified activities; therefore, the EA focuses its discussion on the effects of takes to be authorized pursuant to the ITR. The impacts from the activities themselves could proceed without MMPA coverage at the discretion of the applicant and are not effects of the Proposed Action, but were nevertheless considered as part of the environmental baseline and in the cumulative impacts analysis.

Based on the output of the den disturbance analysis, we estimated the number of dens and probability of ≥1 den being run over by equipment used while driving off established roads in the project area. Because it is possible to run over dens only when driving off established roads, we restricted our analysis to only those simulated dens that occurred adjacent to proposed ice roads, tundra travel routes, and seismic grids. Because the applicant did not specify how seismic grids would be laid out, we followed a similar approach as Wilson and Durner (2020) and simulated seismic grids across the high- and low-density seismic areas (Fig. 7). We simulated E–W and N–S seismic track lines, each separated by 201.2 m (660 ft). We assumed vehicles traveling seismic grids, ice roads, and tundra travel routes would have a width of 3.4 m (11.2 ft; Wilson and Durner 2020).

For each iteration of the model, we determined which dens occurred within the footprint (*i.e.,* 3.4 m) of the different movement paths. We then determined if dens had been identified by AIR surveys. If a den was identified on an AIR survey, we excluded it from further analysis. Lastly, we restricted the set of dens available to be run over to those that did not previously have a take by Level A harassment or lethal take assigned to it during the early or late denning periods. That is, those dens that did not previously respond to disturbance and, therefore, would be vulnerable to being run over by equipment. We did not consider the potential for running over dens during the den establishment period or post-emergence period because during both of these periods bears are known to be on the surface and would likely be visible to operators and the bears would be able to readily detect the potential risk of the vehicles and respond appropriately.

Our approach for estimating the number of dens potentially run over by equipment can be considered conservative because it does not account for the fact that operators have stated they will avoid crossing denning habitat whenever possible, which would further reduce the probability of running over a den. Similarly, the seismic grids we simulated likely cover a greater area than a normal seismic layout, but because information was not provided by the applicant, we used the more liberal layout.

We found that the probability of running over a den is exceedingly low each year of the ITR. The probability of running over ≥1 den each winter ranged from 0.0041 to 0.0059. This makes sense given the existing mitigation measures analyzed take some dens off the table because they are found prior to the commencement of activities that could run over them. Additionally, the actual footprint of vehicles is very small compared to the scale of the project area, thus, there is a very low risk to begin with that a den would even overlap a vehicle's footprint on the landscape.

When additional mitigation measures proposed by the applicant are considered, including the avoidance of steep terrain and the training of personnel for identifying den site characteristics, which cannot be quantified, the Service determined that the probability of running over a den was sufficiently small so that it could be dismissed and therefore was not included in this ITR.

Comment 67: One commenter suggested that the Service should use randomized case studies for their polar bear denning analysis.

Response: It is not clear exactly what the commenter means by the ''case studies used for the case studies are not randomized.'' There was no way to use ''randomized'' data in this case. The use of randomized data in this case would require conducting a study by radio-collaring denning females and then observing their response to any den disturbance. This runs the risk of substantial disturbance in both the capture and collaring (see Amstrup 1993, Lunn et al. 2004) and the observation (see Smith et al. 2007, 2010, 2013; Robinson 2014). Instead we relied on the case studies, the best available information, to inform our model and take probabilities.

Comment 68: One commenter suggested that the Service should reevaluate the most recent scientific evidence on the number of land-based dens for the SBS polar bear stock to avoid underestimating the number of dens used for the denning analysis.

Response: We are not sure what leads the commenter to believe that the results of Atwood et al. (2020) are an underestimate of the number of dens on shore. Atwood et al. (2020) represents the best available science and updates the approach developed by Wilson and Durner (2020) to incorporate newer data that was not available for Wilson and Durner (2020) and which does a better job incorporating uncertainty into the parameters used in the approach. The reason Atwood et al. (2020) is used over Wilson and Durner (2020) is two-fold. First, an updated den catalogue (*i.e.,* Durner et al. 2020) wasn't available when Wilson and Durner (2020) conducted their analysis. This new set of dens is the primary reason that the estimate from Atwood et al. differs from Wilson and Durner. Second, multiple public comments on the analysis of Wilson and Durner noted that uncertainty in underlying parameters

were not adequately accounted for. Atwood et al. (2020) overcame this problem to present a more robust estimate. We agree with the commenter that, in the long term, land-based denning is likely to increase due to loss of sea ice. However, the most recent study of land-based denning in the SBS, Olson et al. (2017) found that rates of land-based denning have been constant (*i.e.,* not statistically different) between the periods 1996–2006 and 2007–2013. Given that the lowest sea ice minimum extent was observed in 2012, it's unlikely that there has been a significant increase in land-based denning since the data used in Olson et al. (2017).

Comment 69: One commenter suggested the Service should consider including more recent years of denning data in their denning analysis in order to account for the increased number of land-based dens.

Response: Atwood et al. (2020) are clear about their methods and what data they used to calculate the 54% of dens occurring on land. This estimate conforms to those found in Olson et al. (2017), which is the most recently published study on the percent of SBS bears denning on land. Olson et al. (2017) found that on average, in the period 1996–2006, 54% of bears in the SBS denned on land, and in the period 2007–2013, 55% denned on land. Thus, these data nearly perfectly conform to the values used by Atwood et al. (2020; which also included uncertainty around those estimates). The reason Atwood only used data through 2015 is because that is the last year when bears received GPS collars, which are required to obtain an unbiased estimate of the distribution of denning. The graph the commenters present in their letter is not an accurate way to represent the data in the den catalogue. While it's true that there are additional years of dens in the den catalogue, beyond 2015 they are based on firsthand observations, which are going to show a positive bias towards land-based dens given that limited search effort is conducted offshore. Thus, the best available data are used by Atwood et al. 2020, and the approach used by the commenters is likely biased high and not a proper way to summarize the data.

Comment 70: One commenter suggested that the Service should clarify their methods for accounting for the variation and uncertainty in their polar bear population estimate and the interannual variation in the number of denning female polar bears that was used in the denning analysis.

Response: We agree that Wilson and Durner (2020) failed to account for uncertainty associated with many of the underlying parameters used to estimate the number of dens on shore. That is why we relied on the estimate provided by Atwood et al. (2020) that does account for that uncertainty. The uncertainty accounted for by Atwood et al. (2020) incorporates annual variability in environmental conditions, which could lead to differences in the use of land. So, the Atwood et al. (2020) methods and results are robust to the issues presented by the commenter.

Comment 71: One commenter suggested that the Service should consider accounting for the number of dens containing females without cubs and reevaluating the den emergence date to include only successful dens in order to not underestimate the number of takes for denning polar bears.

Response: We disagree that the model does not account for dens with only a female bear. In fact we provide some probability (~7%) for a den to have 0 cubs. So, we do account for the probability of a female emerging without cubs. As for the incorrect skew of emergence dates, we again disagree with the commenter. We use den emergence data from Rode et al. 2018 and restrict the data to only those that were in the den for a sufficient amount of time to indicate the den was more than a shelter den. Additionally, even though Rode et al. identify some of the dens as not being observed with cubs ~100 days after emergence, it does not indicate that the dens were unsuccessful, only that they were later observed without cubs. Cubs could easily have been lost between emergence and subsequent re-observation. There is currently no way to know if a bear emerged without a cub. If those data were available, we would include them, but they don't exist.

Comment 72: One commenter suggested that the Service's denning analysis using the Wilson and Durner (2020) model framework does not accurately predict impacts to denning polar bears throughout the geographic scope for project activities and the model does not account for uncertainty in the timing and location of Industry activities that may impact denning polar bears.

Response: We disagree with the commenter that the general framework provided by Wilson and Durner (2020) is not suitable for use in this ITR. The approach developed by Wilson and Durner (2020) provides a general framework for how to incorporate different sources of information (as well as associated uncertainty) to analyze how different types of activity and infrastructure might affect denning polar bears. The specific model discussed in Wilson and Durner (2020) has been significantly modified to account for the proposed activities in this Request as well as additional sources of information (*e.g.,* different denning periods) to increase the realism of the model. While it is true that Wilson and Durner (2020) only used the model to analyze impacts to polar bears over a smaller activity area, with one type of industrial activity, the model we published as part of this ITR clearly shows that it is capable of being applied to a larger area and suite of activities.

We also disagree that the ITR does not provide reliable information on where and when activities will occur. Both the code and objects associated with the den disturbance model and the associated shapefiles published with the proposed ITR provide both spatial and temporal information on when/where activities will occur. In instances where specific dates or areas were unknown (*e.g.,* seismic surveys), we accounted for that uncertainty by analyzing the seismic to occur in the ''worst'' place possible for polar bears (within the range provided by AOGA in their Request) as well as accounting for variability in the timing of activity within prescribed bounds. We also disagree with the commenter that the Service did not account for the possibility of a larger seismic survey. This is not true. We clearly state on page 29410 of the **Federal Register** publication of the Proposed ITR that during any given winter, the areas surveyed would be <766 km^2 and <1,183 km^2 in the areas identified as ''relatively high'' and ''relatively low'' den probabilities, respectively.

Comment 73: Commenters suggested that the Service should reevaluate their take determination for early den departures as potentially lethal take for polar bear cubs.

Response: We do allow for potential survival consequence from early emergence. In fact, if a den is disturbed that leads to early emergence, cubs are always given a serious take by Level A harassment. There are currently no data to support that an early departure from the den itself leads to reduced survival. That would take a similar-type analysis that Rode et al. (2018) conducted. While we agree cubs have been observed being killed by conspecifics and other predators after leaving the den site, there is currently no linkage with time spent at the den post-emergence and pre-departure.

Comment 74: One commenter suggested that the Service should clarify their explanation for how non-serious take by Level A harassment was

accounted for in the Service's take determinations.

Response: Table 8 shows the breakdown of estimated take by the level of take. We provided this table so readers could see the relative differences. As is discussed in the description of take by Level A harassment within the proposed rule, Level A harassment (either non-serious or serious) to bears on the surface is extremely rare within the ITR region, and no Level A harassment to Pacific walruses has been reported in the Beaufort Sea ITR region. Thus, the best available information does not support Level A harassment to occur due to surface interactions for polar bears, or in general for walrus given the proposed activities.

Comment 75: One commenter suggested that the Service should consider the probability of take by Level A harassment for polar bear adult females during a den disturbance event.

Response: We disagree that there is a significant probability of an adult female experiencing Level A harassment due to disturbance at the den site. During our review of case studies, we observed no examples where an adult female experienced any sort of harassment that had the potential to injure her. There are also no examples that we are aware of in the literature. Whereas disruptions to the normal timing of den phenology have clearly published negative relationships to cub survival, no such relationships exist for adult females.

Comment 76: One commenter suggested that the Service should clarify their explanation for the impact sources assessed in the denning analysis and whether take by Level A harassment and lethal take are underestimated.

Response: We disagree that our use of disturbance probabilities from the ''repeated'' set of probabilities is inappropriate. During our review of case studies used to estimate these probabilities, the types of activity classified as ''repeated'' are analogous to those expected from seismic surveys. The commenter's assessment that any activity ''will experience the disturbance first as a discrete event'' is inaccurate. For the case studies we reviewed, the same (inaccurate) argument could be made, but as a result the probabilities in the repeated category inherently incorporate that first exposure and its potential to cause disturbance. Based on our definition of what constituted repeated exposure, and therefore whether a case study was classified as repeated/discrete, it would be inappropriate to apply the discrete probabilities to seismic given the unquestionable repeated nature of those activities. We should also note that depending on a simulated den's phenology and the proposed dates of seismic activity, dens could have disturbance applied multiple times (if previous exposures did not result in lethal take or take by Level A harassment response).

We also disagree with the commenter that our decisions on how case studies were classified was arbitrary. We developed clear rules based on a large body of scientific literature to help classify whether a response to an exposure was larger than expected under unexposed conditions. Similarly, we did not ''arbitrarily'' decide when to exclude case studies from consideration. A significant amount of deliberation went into the assessment of each case study, and only two factors would disqualify a case study from being included in the final probability calculations: (1) There was insufficient information to identify when disturbance occurred or what the outcome was to the den under consideration, or (2) the type of activity was deemed to be outside of the activities proposed by AOGA (*e.g.,* physical capture of polar bears in dens). We disagree with the commenter's assessment that the Service was overly arbitrary in how the different case studies were summarized. They cite our assessment of case study 47 as an example of there being sufficient information but the Service classifying it as 'insufficient information'. The reality is, this case study did not provide information on how far the crews were from the den, nor the date that the bears emerged from the den. Given our published criteria, we couldn't reliably assign take to this case. We agree that take was certainly possible, but insufficient information precluded us from coming to that conclusion.

The commenter highlights case study 7 as another example. Yet, there were clear reasons we didn't include this case study. First, it was unclear whether the ''hunter'' identified in the case study actually observed the same bear as Amstrup did given the time lapse between observations. That would be another explanation for why there were no cubs observed. Thus, there was incomplete information to fully assess this case study. We disagree with the commenter that it is inappropriate to assume that once a Level A harassment or lethal take occurs that subsequent harassment/take is not considered. This really applies to only one period, the late denning period, because lethal take/take by Level A harassment is not possible in the den establishment period; the only disturbance outcome during the early denning period is ''lethal'' thus future take/harassment is not possible, and during the post-emergence period, any additional take is accounted for in the surface analysis (*i.e.,* not the denning analysis). During the late denning period, we believe it is appropriate to not consider additional harassment/take if Level A harassment is simulated to occur. In the late denning period, Level A harassment is considered serious take by Level A harassment, thus it already assumes a likely lethal outcome. Thus, applying additional lethal take when it has already been accounted for is not appropriate.

Comment 77: One commenter suggested that the Service should consider the size of cubs, which may indicate poor body condition and lower survival likelihood, as factors to determine take for den disturbance events.

Response: The commenter outlines some well-established ecological relationships (*e.g.,* cub size and survival, sea ice and body condition), but fails to understand the purpose of the case study analysis, the underlying assumptions, and how the results are utilized in the simulation model. The case study analysis was used to estimate the probability of a disturbance eliciting a specific response during each denning period; we then used those probabilities in the model to determine how simulated dens would respond to disturbances at specific times. For example, from the case study analysis, we found that dens exposed to a discrete exposure during the late denning period resulted in early emergences 90.9% of the time. Consequently, in the simulation model, dens exposed to a discrete exposure between the time cubs were 60 day old and their intended emergence date had a 90.9% chance, on average, of emerging early. Because the best available science indicates that early emergences are associated with decreased cub survival (*e.g.,* Rode et al. 2018), we classified those dens as incurring serious take by Level A harassment. The commenter argues that cubs today are smaller than in the past because of environmental changes and are therefore more likely to be impacted negatively by early emergences and departures. Although that assertion may be correct, no studies have demonstrated that cub size influences when a disturbance elicits an early emergence, and no studies have evaluated the relationship between cub size at emergence and survival probability in a manner that would

allow us to refine our treatment of early emergences (*e.g.,* separating those that ultimately resulted in mortality from those that did not). See below for our response to the ''known outcomes'' statement.

Comment 78: One commenter suggested that the Service should consider followup information from den case studies and reevaluate take determinations based on latent effects of den disturbance to polar bear cubs.

Response: The commenter does not indicate which cases they consider to have ''known outcomes'' or ''followup,'' so we cannot address those directly. We are also unclear about which cases correspond to claims about observer opinion on cub size and survival. For example, the commenter states that ''observers thought the cub of another female was too small to survive,'' and the outcome for this case was an observed behavioral response. This statement seems to correspond with a case where the final outcome was 'insufficient information' and was not used in calculating the response probabilities. It is possible that the cases the commenter is referring to elicited no observable response in a particular period but were subjected to disturbances in later periods that did elicit negative responses (the commenter's claim that a bear that departed a den without cubs was classified as a non-serious response supports this possibility because that classification would not be possible during a period when the bear left the den).

The general argument the commenter is expressing seems to be that latent effects from disturbance could manifest later, and, therefore, our harassment classifications for early departure in the post-emergence period should be higher (presumably serious take by Level A harassment as opposed to non-serious take by Level A harassment). Survival of cubs-of-the-year is often low, and this is especially true in the Southern Beaufort Sea subpopulation, even for those cubs from undisturbed dens. It should be expected, therefore, that some cubs that departed den sites early during the post-emergence period would die before reaching independence and others would not. Although an early departure from a den due to disturbance may incur a fitness cost (hence the non-serious take by Level A harassment classification), the probability or degree of that cost has not been evaluated. Consequently, assigning a higher level of take (*i.e.,* serious take by Level A harassment) is inappropriate because that would signify an injury that is likely to result in mortality.

Comment 79: One commenter suggested that the Service should clarify their explanation for the dates to distinguish the early denning period from the late denning period because this date may be later.

Response: The specific data range cited by the commenter is only related to the review of case studies because individual birth dates couldn't be known. We therefore had to rely on means obtained from the scientific literature to represent the natural range of den phenology data. The actual analysis to estimate disturbance and take to denning bears allowed for variability in denning phenology dates that match the published range of values. The actual start/end dates for the given denning periods in the analysis are based on the simulated dates for specific life history events. For example, bears are given a simulated birth date ranging from 1 December to 15 January (*i.e.,* the start of the early denning period). The late denning period then begins on the date those simulated cubs turn 60 days old.

Comment 80: One commenter suggested that the Service should consider whether climate change may cause a greater impact on polar bears that relocate their dens in response to disturbance.

Response: While we agree with the commenter that these types of relationships are conceivable, we are unaware of any information to support or document these claims. Further, these statements are just conjectures, and it's equally feasible that females have sufficient energetic reserves to find a new den site given that they already spend energy scouting for ideal den sites. We are therefore required to use the currently best-available information, which indicates minimal impacts to denning females if forced to find a new den site after being disturbed.

Comment 81: One commenter suggested that the Service should consider whether the opportunistically collected data on polar bear dens is an accurate representation of polar bear responses to den disturbance and whether the Service developed accurate model assumptions based on polar bear responses to den disturbance.

Response: We use the best available information to calculate the probabilities of different levels of response to industrial activities. It is important to consider the variability across individuals and how they respond. The Service does not assume only minor behavioral responses, but provides estimates varying from lethal take of cubs to minor behavioral responses because that is the range of responses observed in real-world examples.

Comment 82: One commenter suggested that the Service should classify all cases in which denning polar bears are disturbed by industry activities as take by Level A harassment.

Response: We agree that there are sufficient data to show variability in responses to human activity. That is what we show with our case study assessment (*i.e.,* see table 7 with disturbance probabilities). There's always some probability of no response and others of varying levels of disturbance. We also agree that the case study review didn't allow for accounting for bears that chose not to den near existing infrastructure/activity nor every single den that may have been adjacent to activities but going undetected. There is no way to ever detect all dens. However, we do account for bears that avoid denning near infrastructure. We detail this on pages 86 FR 29407–29408 of the proposed rule (June 1, 2021). Using historical den data, we found that dens occurred less frequently than expected adjacent to existing infrastructure, so that is accounted for in the model. It is simply an assumption (with no published information to back it up) that bears choosing to den away from Industry would be more sensitive to disturbance. Again, it may be the case, but it's also possible that it is not. So, without any data to support this claim, it would be inappropriate to incorporate it into the analysis. We disagree that we should treat all bears that are exposed to disturbance as having the potential for injury or death. The case study data and other published studies (*e.g.,* Amstrup 1993, Larson et al. 2020) clearly show this is not the case. And, as the commenter suggests, we know that there is a great deal of variability in responses to human activity. So, it would be inappropriate, and not based on the best-available science, to assume all bears are subject to potential injury or death.

Comment 83: One commenter suggested that the Service should consider that specific Industry activities may have different levels of impact on denning polar bears.

Response: The probabilities in Table 7 are drawn from a wide range of activities ranging from very minimal human activity, to very invasive. In our model framework, the varied and multiple sources of activity are accounted for. Briefly, a den is allowed to be exposed to disturbance until it is either disturbed and assigned a take by Level A harassment or greater, or bears emerge and depart their den by the

expected (*i.e.,* undisturbed) dates. Thus, we do account for the suite of activities that can disturb a den. We agree with the commenter that no studies exist looking at how denning bears respond to specific activities. We agree that it would be ideal to know the probability of different levels of response to different types of activity. Unfortunately, those data do not currently exist. While Owen et al. (2020) shows varied distances that denning bears can detect different types of activities, there are no associated data with the distances at which bears will display a disturbance response once a stimulus is detected. So, we had to take the average approach across activity types. This likely leads to overestimate of take for more limited activities and underestimate of take for more significant activities. But on average, the results would be accurate.

Comment 84: One commenter suggested that the Service should consider individual variability and local weather conditions when determining the time period in which polar bears emerge and depart from their dens.

Response: We agree that local conditions may influence when bears choose to depart their den sites. Unfortunately those relationships have not been established so are currently just conjecture. We use the best available data to establish the range of emergence and departure dates so they capture the natural range of variability in when bears decide to emerge from and depart their dens. We simulate each individual den with specific dates when key activities occur (*e.g.,* emergence, departure), so we incorporate the individual decision on what constitutes ''early'' and do not base it on an overall population-level mean.

Comment 85: One commenter suggested that the Service should consider Industry impacts on mother polar bears and cubs as they are traveling from den sites to the sea ice.

Response: The encounter rates used by the Service were generated using records of polar bear encounters that encompass the dates when sows and cubs are likely moving from den sites to the sea ice (*i.e.,* the best available information). Thus, these individuals are currently incorporated in the take estimates presented in the ITR. While we agree that the type of encounter described by the commenter is possible, we found no evidence in the encounter data used that shows instances of females abandoning cubs while after departing the den site as a result of disturbance from industrial activities. This indicates these types of impacts are likely very rare. The research operation flights referenced by the commenter are typically at a much lower elevation than industrial flights, and the potential take of these flights has been discussed in Aircraft Impact to Surface Bears.

Comment 86: Two commenters suggested that the Service should clarify the operational constraints of Industry vehicles in polar bear denning habitat and whether vehicle activity was evaluated as an impact factor in the denning analysis.

Response: We disagree with the commenter that an attempt would be made to identify denning habitat in the winter once snow fell. Instead, we rely on studies that have already occurred to identify areas with suitable conditions for capturing snow. The commenter cites the comments from Steve Amstrup, yet he is a co-author on most of the studies that have identified these areas in advance of activities. The overall probability of running over a den is exceptionally small. First, two to three AIR surveys must occur before activity commences in an area. Given the detection probability of AIR, this leads to 65–80% (on average) of dens being detected. Then, given the overall avoidance by Industry of crossing areas suitable for denning and the relatively small footprint of off-road travel in the project area, and the likelihood of bears abandoning a den before vehicles physically run over it leads to a very low risk of this occurring. Operators will be required to have and use the USGS denning habitat layer to avoid denning habitat whenever possible. See also Analysis and Assumptions Regarding Den Collapse, above.

Comment 87: One commenter suggested that there is insufficient information regarding the vulnerability of denning habitat to vehicle travel, and that the Service should restrict Industry vehicle activities in all potential polar bear denning habitat defined by USGS in order to reduce impacts to denning polar bears.

Response: We disagree that there is insufficient information in the ITR to ascertain how much denning habitat will be vulnerable to vehicle travel. We provided all of the tundra travel, ice road, and seismic survey region spatial data that are part of this ITR. One could easily use those files and calculate how much denning habitat might be exposed to activities. We note, however, that just because there is sufficient topographic relief to capture snow doesn't mean that bears will use it for denning. Thus, it's inappropriate to consider any area with sufficient slope to be off limits. That requires some additional assessment of the probability of a bear using that area. We also provided the layer on relative probability of denning. We account for the number of dens that go undetected and are likely to be disturbed by activities. See also comments and responses above.

Comment 88: Two commenters suggested that the Service should evaluate the limitations of ground-based den detection, such as difficulty visibly distinguishing dens and suitable denning habitat in winter and low efficacy of hand-held infrared detectors, as part of the Service's risk assessment for industry vehicles causing den disturbance.

Response: We disagree. The applicant stated that they would avoid steep banks so we also considered this in our analysis, which, along with the other mitigation measures in place (*i.e.,* aerial infrared surveys, trained observers, etc.) reduced the probability of running over a den to such a small level that it could be dismissed and not considered in the analysis. See also the comments and responses above.

Comment 89: One commenter suggested that the Service should clarify how the multiple disturbance events during seismic surveys are evaluated in order to determine impacts to denning polar bears and whether the Service's assumption for seismic survey impacts accurately represents realistic impacts.

Response: The proposed ITR does account for the activity associated with advance crews during seismic surveys. The start date for seismic activities is when the advance crews first enter the seismic areas, so those are the first dates that dens are exposed to disturbance and a determination is made (in the model framework) whether a den is disturbed or not. The response probabilities we used for seismic were derived from case studies where the activities occurred repeatedly, similar to activities related to seismic surveys. Thus, the repeated activities associated with seismic were accounted for based on the set of response probabilities we used.

Comment 90: One commenter suggests that the Service should account for take of polar bears during AIR calibration flights, in which aircraft calibrate their infrared instruments over known polar bear dens.

Response: The AOGA did not include flights over known dens on barrier islands in their Request for an ITR. Thus, potential take from this practice was not analyzed, and any potential take that may occur as a result of these calibration flights would not be covered by the ITR.

Comment 91: One commenter suggested that the Service should more thoroughly evaluate the distance at

which take is estimated as well as fully evaluate whether additional take could result from activities requisite to tundra travel.

Response: As stated in the discussion of ''Impact Area'' within the ITR, behavioral response rates of polar bears to disturbances are highly variable, and data that support the relationship between distance to bears and disturbance is limited. The Service has relied upon a number of studies, representing the best available science, to arrive at the potential impact area of 1.6 km, including the study cited by the commenter. The authors found that female polar bears with cubs (the most conservative group observed) began to walk or run away at a mean distance of 1,534 m. Importantly, these bears were reacting to researchers directly approaching them with snowmobiles, which is an intentional (as opposed to incidental) act, and simply walking away from an area may not rise to the threshold of Level B harassment under the MMPA. The rates of harassment used to quantitatively estimate potential take were developed using a dataset that includes observations of human-polar bear encounters on the North Slope of Alaska. These encounters include observations of polar bear responses to snowmachines, trucks, Tuckers, bulldozers, and other industrial equipment. As such, the effects of these noise sources are incorporated into the Service's take estimates.

Comment 92: One commenter suggested that the Service should clarify their take evaluation of repeated disturbances to the same polar bear.

Response: As the Service described in their description of critical assumptions in the ITR, the available studies of polar bear behavior indicate that the intensity of polar bear reaction to noise disturbance may be based on previous interactions, sex, age, and maternal status. However, as it is impossible (without unique identifiers such as collars or ear tags) to record repeated observations of the same bear, the Service has estimated the number of Level B harassment events from the proposed activities using the assumption that each event involves a different bear. The Service acknowledges bears may be harassed repeatedly. Each harassment event is classified as a separate take and is included in small numbers determinations.

Comment 93: Commenters suggested that the Service did not have information on the specific Industry activities planned during this regulation period, which is needed to make the Service's determinations.

Response: The Service has provided detailed descriptions of the proposed activities within the ITR. We have also provided the public with geospatial files of these proposed activities during the public comment period in additional to monthly human occupancy rates. Further, under Description of Letters of Authorization (LOAs) in the ITR, the Service explains that requests for LOAs must be consistent with the activity descriptions and mitigation and monitoring requirements of the ITR. Thus, the Service used detailed descriptions of what, where, and when activities will occur to calculate quantitative take estimates.

Comment 94: One commenter suggested that the Service should address how uncertainty and natural environmental variation are accounted for in the surface interaction model.

Response: The Service used best available science to estimate ice season encounter rates. As the commenter has noted, observation in the Arctic during polar night or severe weather conditions is difficult, and as such there are no known studies that have conducted site-specific surveys in the winter months within the project area. The Service used the most comprehensive database available, its LOA database, to develop encounter rates and quantitative take estimates. Statistical uncertainty was accounted for when developing level B harassment rates. Furthermore, by averaging the number of encounters over the past 5 years, the Service has encompassed year-to-year differences in bear density.

Comment 95: One commenter suggested that the Service should consider whether take by Level A harassment will occur if Industry-related noise disturbs walruses hauled out on land causing them to stampede towards the water and potentially trampling walruses during the stampede and the basis for the take estimate.

Response: The Service does not dispute that walruses may stampede if disturbed while hauled out on land. This behavior was discussed in the proposed ITR under Description of Marine Mammals in the Specified Geographic Region: Pacific Walruses. However, as is also noted in that section, Pacific walruses are extralimital in the Southern Beaufort Sea and are rarely encountered. There are no records of haulouts within the area of proposed activities. Thus, using the best available records of Pacific walrus abundance in the South Beaufort Sea, the Service estimated that the potential existed for a group of up to 15 walrus to be encountered by humans in the project area during the open-water season.

Comment 96: Commenters suggested that the Service should clarify how the polar bears' increased use of land in recent years is accounted for in the surface interaction model.

Response: The Service used the best available data to calculate encounter and take rates. In ''Description of Marine Mammals in the Specified Geographic Region,'' the Service describes an increase in the percentage of the Southern Beaufort Sea stock that comes ashore in the summer and fall (Atwood et al. 2016). By using an average of 5 years of reports, the Service captured variability in the number of encounters that may occur year to year. By using encounters in the period 2014–2018, the Service has generated encounter rates that represent contemporary terrestrial habitat use.

Comment 97: One commenter suggests that the Service underestimated potential take and suggests clarification on the explanation for determining take from surface interactions.

Response: We disagree. The Service conducted a robust analysis of surface-level interactions related to human-bear encounters. The Service discussed that analysis in our Evaluation of Effects of Specified Activities on Polar Bears, Pacific Walruses, and Prey Species: Polar Bear: Surface Interactions, and we reaffirm that analysis in this final rule.

Comment 98: One commenter suggested that the Service should clarify how Industry activity impacts on non-denning polar bears, specifically mother bears with cubs traveling to the sea ice after den departure, are evaluated as take in the surface interaction analysis.

Response: The dataset that was used to analyze potential take from surface interactions encompassed all recorded human-polar bear interactions throughout the year, including the months when sows are moving toward the sea ice with cubs of the year. There are no recorded interactions in the 2014–2018 dataset between Industry and these bears that resulted in Level A harassment. The Service has also accounted for these potential interactions when establishing mitigation measures. Under the mitigation measures established in the proposed rule, Industry must survey for maternal polar bear dens, create exclusion zones around known dens, and report all polar bear interactions (including those with sows and cubs) to the Service within 48 hours of the event.

Comment 99: One commenter suggested that the Service should clarify that infrared methods include both aerial and ground-based technology methods in order to provide Industry entities the flexibility to use the most

practicable means for required infrared surveys.

Response: Ground-based infrared surveys are not directly comparable to AIR surveys and should not be considered to have equivalent detection rates. We are not aware of any studies that have directly estimated infrared detection from ground-based surveys. But studies have documented that ground-based infrared is likely to lower detection probability given the greater impacts of blowing snow on detection than when doing aerial surveys (Robinson et al. 2014). Pedersen et al. (2020) found that infrared from a vertical position (*i.e.,* aerial) was four times more likely to detect a den than infrared from a horizontal position (*i.e.,* from the ground). Given that our analysis was based on AOGA's proposal to conduct AIR surveys, we did not estimate what the expected level of take would be if ground-based infrared was used instead on a case-by-case basis. Based on what has been published on the topic, it would not be appropriate to treat ground-based infrared detection as equivalent to aerial-based efforts.

Comment 100: One commenter suggested that the Service should revise their language for the time period in which AIR surveys are to be conducted in order to allow for flexibility due to poor weather and operational complications.

Response: The results of Wilson and Durner (2020) show that specificity in dates when activities occur can significantly affect the level of disturbance expected from industrial activities. The Service worked with AOGA to find date ranges for AIR that met their constraints but that also provided sufficient protection for denning polar bears in light of their proposed activities. AOGA stated they were amenable to these dates. Unfortunately, the Service's analysis is contingent on AIR surveys being conducted within the date ranges in the draft ITR and any deviation from those dates could lead to increased levels of take and harassment of denning bears. Thus, the Service will not be able to accommodate this request.

Comment 101: One commenter suggested that the Service should clarify whether a third AIR survey is required for seismic survey activities.

Response: The Service is requiring three AIR surveys to occur prior to all seismic activities. The Service has worked together with the applicant to develop mitigation measures that ensure the least practicable adverse impact on polar bears. The applicant agreed that three surveys are practicable and will be conducted prior to all seismic activities as a condition of the LOA.

Comment 102: One commenter suggested that the Service should address whether the reported efficacy of AIR is sufficient to detect polar bear dens prior to the commencement of Industry activities.

Response: We incorporate these different studies cited in the comment that rely on aerial surveys to establish our AIR efficacy used in the model. We don't assume complete detection of dens, but rather a value of 41% (with associated uncertainty). So, we account for the inability of an AIR survey to detect all dens in our modeling framework, and the value we use is actually lower than that published in Smith et al. (2020). Robinson et al. (2014) is inappropriate to include because it was based on hand-held ground-based infrared, which is not as effective as aerial surveys, and they do not provide an estimate of detection probability. But we do include the results from Smith et al. (2020) and Amstrup et al. (2004) in our analysis, as well as a new study on artificial dens (Woodruff and Wilson 2021).

Comment 103: One commenter suggested that the Service should consider how the variation in weather conditions will affect the efficacy of AIR to detect polar bear dens.

Response: The AIR efficacy values we use are from a suite of weather conditions and not just optimal conditions, so they cover the range of possible conditions that surveys are flown. For example, Amstrup et al. 2004 found that AIR efficacy was >80% for optimal weather conditions, but we don't use that value. We use the average AIR efficacy, which is closer to 55% for Amstrup. Because a range of weather conditions is used, our estimates are able to provide inference across those conditions. Additionally, while we agree that weather conditions in northern Alaska are likely to change with climate change, surveys are still required to be flown under conditions that have been found to be suitable.

Comment 104: One commenter suggested that the Service should address that polar bear dens can remain undetected despite multiple AIR surveys in the area and whether the requirement for multiple AIR surveys will effectively increase the den detection rate.

Response: We agree that more AIR surveys do not make them more effective. Dens in the model can continue to go undetected even after multiple surveys. But, the laws of probability indicate that if you do the surveys multiple times over a den that is available to be detected, the probability that it will be detected (at least once) increases. Similar to Amstrup et al. (2004), when you apply two AIR surveys to our simulated dens, the overall probability of detection is only ~65%. So, it is incorrect that more surveys do not equal more dens detected.

Comment 105: One commenter suggested that the Service should address how the efficacy of AIR for detecting dens with various depths of snow cover was accounted for in their den detection model.

Response: We don't assume that dens with snow depth >100 cm can't be detected for the current analysis. AIR efficacy rates are for all dens (*i.e.,* independent of snow depth), so by default includes those dens that are unable to be detected for whatever reason. Smith et al. (2020) did not account for snow depth in their detection probability, and Woodruff and Wilson (2021) did not find a relationship between detection and snow depth. That is why we don't take into account snow depth for the approach we took in this model.

Comment 106: One commenter suggested that the Service should clarify their explanation for the sources used to inform their estimation of den detection probability and how uncertainty was accounted for during their estimation of den detection probability.

Response: Our approach is not arbitrary. We are aware of only three studies that utilize AIR detection estimates. Although Scheidler and Perham published a report on aerial survey detections, they had significant issues (published in their report) that precluded our use of their results. Other studies use drones (Pedersen et al. 2020) or handheld infrared (Robinson et al. 2014), which are likely not comparable and don't actually provide detection probabilities. With respect to the Woodruff and Wilson (2021) study, the Service published the white paper to give readers details on how the probabilities were derived, but the greater context of the study was not provided because it is currently under peer-review. Many limitations to the study make the use of the lower estimate questionable (*e.g.,* onboard navigation equipment was not allowed for observers compared to real surveys). Thus, we used the detection estimate from that study as the most reliable (*i.e.,* dens that were determined to have been covered by the AIR camera). So, the decision was not arbitrary, but based on our in-depth knowledge of the study and its limitations. Lastly, the Service doesn't ignore the uncertainty in den

detection depending on people on the survey crew. Those differences are already incorporated into the estimates in Woodruff and Wilson (2021). All three surveyors had significant experience using AIR to detect polar bear dens. Thus, our estimate represents the average detection rates for people with training in the use of AIR to detect polar bear dens.

Comment 107: One commenter suggested that the Service underestimated the number of polar bear dens that would remain undetected, which may affect their take estimations.

Response: First, the den model does not assume only 52 dens are on the land in any given year. That is the mean value we used, but we accounted for the uncertainty in this estimate, so the number of dens simulated during each iteration is highly variable. We agree with the assessment by the commenter that the results of Woodruff and Wilson (2021) show that only 50% of dens were detected at least once during the study. While that is not the correct metric to use in the analysis, our approach to estimating infrared efficacy took into account the lower detection rates for this study in combination with the two other studies that provide an aerial detection rate of dens with AIR.

Comment 108: Two commenters suggested that the Service should clarify the optimal weather conditions for AIR surveys to be conducted in order to avoid AIR surveys being conducted in suboptimal conditions and affecting polar bear den detection rates.

Response: The estimates of AIR detection used in the analysis were not obtained under optimal weather conditions, but under a range of weather conditions that AIR surveys are possible. Thus, optimal weather conditions are not required based on the estimates of detection we used. That said, it has been standard practice for Industry operators to conduct their AIR surveys within parameters outlined by Amstrup et al., 2004 and York et al., 2004. This has been added to the Mitigation and Monitoring requirements in the ITR.

Comment 109: The regulatory text in the proposed rule at § 18.120(a) describes the offshore boundary of the ITR as matching the boundary of the BOEM Beaufort Sea Planning area. However, the preamble text and the maps in both the preamble and the proposed rule describe the geographic region as extending 80.5 km (50 mi) offshore rather than matching the BOEM Planning Area boundary. This discrepancy should be corrected.

Response: We agree and have clarified this final rule so that the preamble text reflects the boundaries of the geographic area in the regulatory language.

Comment 110: One commenter suggested that the Service should request that helicopters be used for AIR surveys because it has been reported that polar bear den detection rates are higher when helicopters are used compared to fixed-wing aircraft.

Response: Use of helicopters to survey active dens might actually lead to greater levels of disturbance and take than with fixed-wing aircraft. While it's true that helicopters are more maneuverable than airplanes, we have not seen any published data (only conjecture) that detection rates for dens are higher when a helicopter is used vs. a fixed-wing aircraft. Interestingly, Amstrup et al. (2004) used a helicopter and Smith et al. (2020) used a fixed-wing, yet when accounting for likely undetectable dens, Amstrup et al. (2004) has a mean detection of ~55% compared to Smith et al. (2020)'s ~45%. These are likely statistically insignificant as the 95% CI for the Amstrup et al. (2004) estimate largely overlaps the Smith et al. (2004) point estimate, which does not provide an estimate of the associated uncertainty. Lastly, it is incorrect that fixed-wings create contrails and helicopters do not. We have run into issues with helicopters causing contrails, which impede visibility while circling bears during capture operations in the Arctic when temperatures are <0 °F.

Comment 111: One commenter suggested that the Service overestimated their polar bear den detection rate for AIR surveys, which may underestimate take estimates resulting from den disturbance.

Response: We rely on the best available information to obtain estimates of AIR efficacy to detect established dens. The mean value used is in line with those studies, and the associated variability allows detection to be as low as 1.5% in some iterations of the model.

Comment 112: One commenter suggested that the Service overestimated their polar bear den detection rate for AIR surveys, which underestimates the number of undetected polar bear dens that may be potentially disturbed by Industry activities.

Response: We disagree with this characterization of the Wilson and Durner (2020) estimate derived from Amstrup et al. (2004). As noted in the ITR, the estimate derived by Wilson and Durner (2020), *i.e.,* ~74%, is only for dens available to be detected (*i.e.,* those with snow shallow enough to allow AIR detection). For the current analysis, given that Woodruff and Wilson (2021) didn't find a relationship between detection and snow depth, and Smith et al. (2020) did not account for dens unavailable to be detected (*e.g.,* due to snow depth), we corrected the Wilson and Durner (2020) estimate to be an average detection rate regardless of whether a den was available to be detected or not. That led to an estimate ~55%, with confidence intervals that overlap the Smith et al. (2020) estimate. Smith et al. (2020) did not provide an estimate of uncertainty for their mean den detection rate. But overall the estimates are very similar and not statistically different. The Wilson and Durner (2020) approach has been peer-reviewed and published in the peer-reviewed literature, so it constitutes the best available information and warrants inclusion in our analysis along with the two other studies that exist to estimate detection of dens using AIR.

Comment 113: One commenter suggested that the Service clarify their requirements for AIR survey flight paths in order to ensure all polar bear denning habitat is adequately surveyed.

Response: Our analysis is predicated on the fact that AOGA will survey all polar bear denning habitat that has been identified in the areas with proposed/current infrastructure and industrial activities. We make this requirement clear in our description of our analytical approach. Thus, AOGA will be required to ensure that all denning habitat is surveyed the requisite number of times to be covered under the ITR.

Comment 114: One commenter suggested that the Service overestimated their polar bear den detection rate because they did not account for the depth of the dens in snow and deterioration of weather conditions during AIR surveys.

Response: As occurs during Industry surveys, AIR surveys were paused when conditions such as wind and fog affected visibility and/or safety of flying. Because of the requirement for the surveys to be ''blind,'' Woodruff and Wilson (2021) did not measure snow depth at the time of den surveys. This would have made tracks in the snow alerting AIR observers to the den location. They did not find a relationship between snow depth and detection and highlight that the deepest den (145-cm snow ceiling thickness) was detected whereas a nearby den with snow ceiling thickness of 66 cm was not. The authors acknowledge there may be other factors not accounted for in the study that are affecting den detection besides snow depth.

Additionally, in the Woodruff and Wilson study, an attempt was made to reduce the influence of subsequent snowfall on their ability to estimate the relationship. Thus, they restricted their assessment of snow depth to data from the first two surveys, to minimize the effects of additional snowfall accumulation on the relationship with detection. We disagree that the study by Woodruff and Wilson suggests ''AIR surveys are unlikely to detect dens.'' Instead, the study shows that dens can be detected, but that the efficacy may not be as high as previously thought. Hence, they actually state ''unlikely to detect all dens.'' However, we take this into account in our analysis and consider the range of studies that have addressed AIR efficacy to derive AIR efficacy used in this analysis. Also see Optimal Weather Conditions for AIR.

Comment 115: One commenter suggested that the Service should consider requesting additional AIR surveys to increase their polar bear den detection rate.

Response: We rely on the best available science regarding the efficacy of aerial IR surveys to detect established polar bear dens. The Service considered multiple options for the number of AIR flights that would be required and found the number published in the ITR adequate for reducing take sufficiently while still feasible for Industry to conduct during the short period of the winter when AIR flights can be reliably done.

Comment 116: One commenter suggested that the Service overestimated their polar bear den detection rate for AIR surveys based on comparisons to other studies.

Response: The 74% detection estimate was only for dens with snow depth <100 cm. The actual probability when ignoring snow depth is closer to 55%. Wilson and Durner are clear how they derived these estimates, and they rely on standard probability methods. The commenter states that the appropriate metric to use from Amstrup et al. (2004) is the overall number of dens detected at least once, divided by the total number of dens surveyed. This is inappropriate, however, because it doesn't take into account how many times each den was surveyed. With increasing search effort, the probability of detecting the den increases. Wilson and Durner (2020) obtained an estimate for the probability of detecting a den on a single survey. We disagree that our mathematic approach ''defies logic,'' or that the approach is sophisticated (it's a simple binomial model) because some dens were detected on multiple occasions. Thus, it is inappropriate to ignore those detections by simply looking at the overall number of dens detected at least once. Wilson and Durner (2020) provide a thorough explanation of their approach, and it went through numerous rounds of peer-review during which the method was deemed appropriate and published in a well-respected peer-reviewed journal.

Comment 117: Two commenters suggested that the Service should clarify their explanation for averaging the polar bear den detection rates across multiple studies considering that each study was conducted in a different situation that may not be applicable to the AIR surveys required for these regulations.

Response: We disagree. Our approach actually tries to accommodate the different limitations of each of the studies. Amstrup was based on real dens; Woodruff was based on artificial dens. Amstrup used all of the tools an aircraft had to offer, but Woodruff didn't to try and control observer learning where dens were. Smith didn't include any estimate of uncertainty in their estimate of detection, nor did they provide much information on methods or underlying data and search effort. So, each study has their own set of limitations, but to our knowledge, these are the only data from AIR surveys. So, it represents the best available information. And the overall probability used wasn't significantly different from the results of Smith et al. (2020).

Comment 118: One commenter suggested that the Service should clarify their explanation for their polar bear den detection rate and recommended that this detection rate is unlikely to exceed 50%.

Response: Unfortunately, 50% is not an appropriate metric from the Woodruff and Wilson study because it doesn't account for search effort nor multiple detections of a den across surveys. Both of those factors need to be considered when estimating a detection probability. Additionally, the public was given only a brief overview of the study and methods because the actual study is still under journal peer review. Thus, the commenter doesn't have all of the caveats associated with that study and why it is likely inappropriate to consider only the results from the Woodruff and Wilson study and ignore the previously published works that have different study designs and pros/cons. The detection probability we derived and used from Amstrup et al. is also very similar to Smith et al. We agree with the commenter that it is unlikely that real-world AIR will have a detection >50%. As we showed in our analysis, our mean detection was 41% and could go as low as 1.5% during any given iteration of the model.

Comment 119: One commenter suggested that the Service should specify flight paths for AIR surveys to ensure complete coverage of all polar bear denning habitat and require that AIR surveys conduct multiple passes across denning habitat as well as use helicopters for AIR surveys to increase den detection rates.

Response: Because the estimates used for AIR efficacy are based on the range of suitable weather conditions under which AIR surveys are acceptable, and the analytical approach requires that all den habitat (as identified in the studies cited) is adequately surveyed, the ITR already implicitly requires these to occur.

Comment 120: One commenter suggested that the Service should address how the efficacy of AIR for detecting polar bear dens with more than 90 cm of snow cover was accounted for in their den detection model.

Response: While one study (Robinson et al. 2014) showed lower detectability for dens in snow deeper than 90 cm, it was based on handheld infrared, not aerial. And in the Woodruff and Wilson study, a den with snow ~145 cm deep was detected, so a simple cutoff based on ground-based infrared is likely not appropriate.

Comment 121: One commenter suggested that the Service should consider the practicality of requesting Industry entities to complete three AIR surveys prior to commencing activities in polar bear denning habitat.

Response: The ITR does not indicate that industry will conduct three AIR surveys of all habitat. Three surveys are required only for areas receiving seismic surveys, and in years when seismic occurs, along the pipeline corridor between Deadhorse and Pt. Thomson. Regardless, our analysis requires that all den habitat within 1 mile of industrial activity/infrastructure will receive at least two AIR surveys under conditions suitable for detecting dens. Only if industry flies all of the AIR surveys required per the analysis will they have coverage under the ITR.

The Service notes that the extent of AIR surveys required by this ITR significantly exceeds what has been required under prior iterations of the ITR and is sufficient to ensure that all applicable MMPA standards are met, including the requirement to prescribe means to effect the least practicable adverse impact on the species or stock and its habitat.

Comment 122: One commenter suggested that the Service should

consider whether AIR efficacy and den detection rates will be lower in areas adjacent to the Arctic National Wildlife Refuge because snow cover in these areas are greater than other areas and polar bear denning density is anticipated to be greater and more complex in these areas.

Response: We take into account in the model the fact that some dens inside ANWR will go undetected because AIR surveys are not planned there and the area is outside of the activity area proposed by AOGA. We clearly stated this in the Proposed ITR document (see page 29407 of the FR publication). We allow dens to be simulated in the refuge, even though activity does not occur there as part of this Request. But they were put there because they could be disturbed by activities in the petition area and go undetected by AIR. Any den within a mile of activity proposed in the ITR, but that occurred inside the refuge, was accounted for in our estimates of take. Because we account for these dens but assume that no AIR surveys will take place, differences in habitat conditions that could affect AIR detection rates are not relevant.

Comment 123: One commenter suggested that the Service continue to evaluate and refine their polar bear denning model assumptions used to determine take estimates for their regulations as more data become available.

Response: The Service has used a comprehensive dataset of polar bear observations to develop estimates of Level B harassment, and will continue to refine these methods and our database for future ITRs. Comparing denning model results to historic Industry–polar bear encounter records is not possible because a systematic effort has never been undertaken by Industry to find all dens adjacent to existing infrastructure, not just ice roads and tundra travel routes as is the current requirement under the existing ITR. Additionally, even when a den is found, monitoring has not occurred systematically (or frequently) to look at dates of den emergence and departure. Further, given that the effects of early emergence can lead to lower cub survival, there is no way for Industry to document all cub mortality events that are associated with den disturbance as this would require constantly monitoring a family group until at least 100 days post emergence (as Rode et al. 2018 did).

Comment 124: One commenter suggested that the polar bear den case studies used to determine responses to den disturbance do not accurately represent the polar bear responses expected during Industry activities because these case studies were collected during scientific studies in which polar bears were captured and collared.

Response: The goal of the case study analysis was to inform the consequences of den disturbance due to industrial activities. Including incidents spanning a range of activities (*i.e.,* Industry and research-related) was reasonable as there are correlations between disturbance caused by research and that caused by Industry, such as inadvertently approaching a den at close distance. Additionally, the premise of some research was to evaluate the response of denning bears to remediation activities. Capture events likely are more intrusive than any disturbance related to industrial or other human activities and were not used in the calculation of take probabilities. Bear responses to capture events can, however, help inform our understanding of how polar bears respond to any type of disturbance. Other activities, such as disturbance caused by people approaching dens or accidental intrusion, are also possible when a den's location is unknown. Consequently, exposures by researchers are useful in understanding how bears respond to disturbance and allowed us to better estimate the response probabilities that informed the simulation model.

Comment 125: One commenter suggested that the Service's use of the upper 99 percent quantile of each probability distribution is too conservative to determine polar bear responses to disturbance and does not accurately reflect observer bias and the number of unobserved takes and this approach results in overestimation of polar bear incidental take.

Response: We disagree. The Service did not use the 99-percent quantiles to account for perceived directional bias by observers (which can neither be confirmed nor denied due to lack of neutral third party observational data), instead, the Service used the 99-percent quantiles to encompass the number of potential Level B harassment events as directed by the MMPA.

Comment 126: One commenter suggested that the Service overestimated the take of polar bears during aircraft activities by assuming a lower flight altitude than is typically flown by Industry aircraft as part of their take determination analyses.

Response: When reviewing the dataset from coastal polar bear surveys, the Service found there was not enough data to identify a significant relationship between polar bear response and distance to the aircraft. The Service applied a constant harassment rate to all flights listed as being flown at 1,500 ft AGL or lower. Many flights were listed with a minimum altitude of 1,500 ft AGL, which would be within the scope of the analysis. Flights that are expected to be above 1,500 ft (generally originating from outside of the ITR region) were described as remaining at this altitude until descent. Without more information on each individual flight's altitude, point of descent, and the present weather conditions, we made the assumption that an aircraft could descend to 1,500 ft AGL or less anywhere within the ITR region.

Comment 127: One commenter suggested that the Service overestimated the number of polar bears observed by vessels during in-water activities and this approach resulted in an overestimation of polar bear encounter rates and take estimates during offshore activities.

Response: There is no data to indicate the number of bears present in the water at any given time; however, we do have data for the number of bears located along the coast, which was used in the analyses. These bears frequently swim between barrier islands and may be impacted by these offshore activities.

Comment 128: One commenter suggested that the Service should reconsider whether the addition of new Industry facilities and infrastructure will correlate with an increase in incidental harassment of polar bears.

Response: We disagree. While AOGA has drawn this conclusion in their Request, the relationship described by the Service between distance to shore and polar bear encounters indicates that an increase in coastal infrastructure will increase the number of encounters and subsequent harassment events. This issue was described at length within the proposed rule.

Comment 129: One commenter suggested that the Service should clarify how they accounted for the uncertainty of non-responses of polar bears to disturbance and whether the likely underrepresentation of non-responses may lead to overestimation of take by Level A harassment.

Response: The case study analysis included all well-documented records of human activity that occurred within 1.6 km of active polar bear dens. We do not believe that exposures that elicited detrimental responses were more likely to be documented than those that seemingly did not. Consequently, the probabilities of exposures resulting in lethal take or Level A harassment are unlikely to be biased. Further, cases that

did not result in an observed detrimental response (*i.e.,* 'non-responses' in the comment) do not necessarily indicate that the animals were unaffected (Frid and Dill 2002, Bejder et al. 2006, Laske et al. 2011); hence, our classification of 'likely physiological response.' Arousals during denning can lead to some increases in body temperature (Craighead et al. 1976, Laske et al. 2011, Evans et al. 2016b) and heart rate (Reynolds et al. 1986, Evans et al. 2016b), both of which require use of valuable energy reserves. Across taxa, unobserved effects, including higher levels of stress hormones (Moberg 2000, Keay et al. 2006) and others have been shown to have the potential to be equally as consequential for reproduction (Carney and Sydeman 1999, Ellenberg et al. 2006, Rode et al. 2018b). Decreased reproductive success or reproductive failure in bears is documented as a consequence of denning disturbance (Ramsay and Dunbrack 1986, Amstrup and Gardner 1994, Linnell et al. 2000, Swenson et al. 1997).

Comment 130: One commenter suggested that the Service should consider additional factors that may cause a polar bear to emerge early from her den without necessarily resulting in reduced cub production and survival, which are referenced in the Rode et al. (2018) study.

Response: We agree with the commenter that there are other hypotheses that may explain the results of Rode et al. (2018), as we acknowledge in the proposed ITR (p. 29393). However, Rode et al. (2018) does indicate that the most likely explanation for their results is the earlier emergence leading to survival consequences for cubs. This makes sense given the altricial nature of cubs when born and the time bears spend at the den site after emergence to allow cubs time to grow more and become acclimated to the outside environment. We do attempt to take into account some of the other causes of emerging from a den without cubs. We allow an average of 7% of simulated dens to emerge without any cubs, so we do account for some females naturally emerging without any offspring, which are not attributed to any form of disturbance from industrial activity. We disagree, however, that because there are other potential hypotheses for the relationship presented in Rode et al. (2018) that we have to ignore the relationship she published. As it currently stands, we don't have any additional data to suggest that the relationship documented in Rode et al. (2018) isn't accurate as portrayed. However, if additional information is published in the future, that would be considered the best scientific information available and we would use it accordingly.

Comment 131: One commenter suggested that the Service should consider whether the variability of mobile activities will affect occupancy rates used to determine take estimates and whether take estimates are overestimated from a conservative occupancy rate.

Response: Occupancy rates for all of the different infrastructure was provided by AOGA as part of their Request.

Comment 132: One commenter suggested that the Service should estimate take for Level A and Level B harassment zones for in-water activities.

Response: The Service has revised Table 1 to include details regarding the sound measurement units and included peak SPL for impulsive sound sources. The Service has also revised references to past ITR Level B harassment and TTS thresholds. With regards to the need for Level A harassment zones, the Service did not calculate this area as no sound sources identified in the proposed activities would produce Level A threshold noise. As was stated in the proposed rule, the Level B harassment zone was smaller than the impact area of surface activities, so we estimated take using the more conservative impact area.

Comment 133: One commenter suggested that the Service should consider whether the number of takes during aircraft overflights is underestimated considering the increased use of helicopters compared to previous years and the higher polar bear response rate to helicopters.

Response: Any flight paths associated with major construction activities have been incorporated into the aircraft analysis. AOGA provided the Service with a list of aircraft that would likely be used for each activity—an increase in helicopter use is speculative. While the harassment rates were calculated using data from AeroCommander flights, the Service discusses results from observational flights using helicopters. The harassment rates associated with these helicopter flights were found to be lower than the rates used in the AOGA Request. No significant relationship between polar bear response and distance to aircraft was concluded from the dataset. We are working to further refine our take rates associated with these analyses; however, more data is needed before we can differentiate take rates based on the type of aircraft. More detailed information on behavioral responses from these overflights can be found in the ITR section Aircraft Impacts to Surface Bears.

Comment 134: A recent peer-reviewed article, ''Polar bear behavioral response to vessel surveys in northeastern Chukchi Sea, 2008–2014'' by Lomac-MacNair et al. (2021), should be incorporated into the Service's analysis of behavioral responses of polar bears to vessel activity as information in the publication could be used to improve the in-water analysis and could also supplement and support established mitigation measures, such as set-back distances for polar bears, as well.

Response: We agree Lomac-MacNair et al. 2021 is a valuable addition to the body of polar bear disturbance literature. However, the paper published after the proposed rule was published for public comment. We have reviewed the publication, and the authors' findings are consistent with the current impact areas used in the proposed and final rules.

Comment 135: The Service's discussion of the peer-reviewed article ''Aquatic behaviour of polar bears (Ursus maritimus) in an increasingly ice-free Arctic.'' Lone, et al. 2018, appears to misstate or overstate conclusions contained in that article.

Response: The Service has clarified our discussion regarding the conclusions we draw from this article as needed.

Comment 136: The Service should supplant the Southall et al. (2019) modeled and extrapolated approach by gathering hearing data (*i.e.,* TTS and PTS) specific to polar bears, rather than relying solely on information attributed to ''other marine carnivores,'' and use polar bear-specific acoustic information for future analyses.

Response: We agree that our analysis could be improved with species-specific information for polar bear responses to sound. We also recognize that such efforts may be challenging to obtain on polar bears in the wild or held in captivity. However, we will continue to improve our understanding of polar bear hearing acuity as feasible.

Comment 137: The Service should supplant the Southall et al. (2019) modeled and extrapolated approach by gathering hearing data (*i.e.,* TTS and PTS) specific to walruses, rather than relying solely on information attributed to ''other marine carnivores,'' and use walrus-specific acoustic information for future analyses.

Response: As noted above, we agree that our analysis could be improved with species-specific information for Pacific walrus responses to sound. We also recognize that such efforts may be

challenging to obtain on Pacific walrus in the wild or held in captivity. However, we will continue to improve our understanding of Pacific walrus hearing acuity as feasible.

Comment 138: The Service should consider the report ''Simulation of Oil Spill Trajectories During the Broken Ice Period in the Chukchi and Beaufort Seas'' (French-McCay et al. 2016) to better inform our analysis of potential polar bear oil spill exposure and effects in the Beaufort Sea.

Response: We have used BOEM's 2020 Oil Spill Risk Assessment because it provides the most current and rigorous treatment of potential oil spills in the Beaufort Sea Planning Area. We agree analysis similar to Wilson et al. 2018 would be a valuable addition to future regulations.

NEPA and ESA

Comment 139: One commenter suggested that the Service's EA is inadequate because it does not present a reasoned explanation for the determinations of polar bear take and requests the Service to prepare an EIS.

Response: We disagree. The Service's EA and FONSI reasonably reflect considerations important to SBS polar bears and Pacific walrus, and are scientifically and legally adequate. It is appropriate for the EA to reference and summarize the ITR's analysis and determinations rather than duplicate them in their entirety.

Comment 140: One commenter suggested that the Service did not consider restricting the geographic scope and timing of activities as an alternative to reduce impacts in their EA.

Response: We disagree. Temporal and geographic constraints were incorporated into AOGA's revised request in light of collaboration with the Service. The Service also considered the use of further time and space restrictions for oil and gas activities to limit the impact on denning bears. These restrictions were not determined to be practicable as they may interfere with human health and safety as well as the continuity of oil and gas operations. The Service found that no additional mitigation measures are required to be imposed through the ITR, other than those described, in order to effect the lease practicable adverse impact on polar bears and walruses.

Comment 141: One commenter suggested that the Service should reevaluate the EA's no action alternative to account for baseline conditions in which the commenter suggests that this alternative will result in a curtailment of activities as opposed to activities proceeding without requested mitigation measures and potentially unauthorized take.

Response: The EA's characterization of the No Action Alternative is appropriate and meets all NEPA requirements. Oil and gas exploration, development, and production activities have occurred at various locations on the North Slope and adjacent Beaufort Sea waters for several decades and will continue to occur in the future, with or without this ITR. Hence, they are necessarily recognized as part of the environmental baseline. The notion that denying AOGA's Request for this ITR would cause the specified oil and gas activities to cease or not occur has no basis in law or practical reality. Operators may proceed without an incidental take authorization (albeit at the risk of enforcement actions), modify their activities in a manner that avoids incidental take, and/or obtain other forms of incidental take authorization (*i.e.,* IHAs or a different ITR).

Comment 142: One commenter suggested that the Service does not adequately discuss the effectiveness of the requested mitigation measures in the EA.

Response: The ''mitigation measures'' integrated into the ITR are already incorporated into the proposed action analyzed in the EA. The case cited by the commenter appears to address the manner in which an action agency must evaluate additional mitigation measures that are not already incorporated into the proposed action, and thus seems off-point. The EA's references to ''spatial and temporal restrictions'' encompass limitations inherent to AOGA's specified activities, *e.g.,* finite project footprints, the seasonal rather than year-round nature of certain activities, buffer zones, etc. These limitations are described in detail in AOGA's Request, the ITR, and Section 2.3.1 of the EA. The EA need not comprehensively re-list each limitation in the Summary sections quoted by the commenter.

Comment 143: One commenter suggested that the Service should account for the potential of take by Level A harassment and discuss the associated impacts on SBS polar bears in the EA.

Response: The Service does not ignore the potential for lethal injurious take to occur. Rather, it quantitatively estimated the probability of such impacts occurring. The commenter acknowledges as much when it references the Service's own estimate. The Service does not assume that no ''take by Level A harassment'' will occur; rather, it does not anticipate that any take beyond take by Level B harassment will occur. The Service disagrees with the commenter's broad and unsupported assertion that it greatly underestimated ''take by Level A harassment.'' The Service analyzed all potential impacts using a rigorous methodology and the best available scientific evidence.

Comment 144: One commenter suggested that the Service should account for additional impacts, such as planned development and increased emissions from future activities, when determining what level of take is permitted in order to be considered a negligible impact.

Response: The MMPA directs the authorization of incidental take where the requestor's specified activities meet specific MMPA standard (*e.g.,* small numbers, negligible impact, no unmitigable adverse impact on the availability of the stock for subsistence purposes). Here, the Service has reasonably determined that the incidental take associated with the specific activities described in AOGA's Request adhere to applicable MMPA standards. The possibility that other activities (*e.g.,* hypothetical activities at ANWR, Liberty, or greenhouse gas emission sources around the world) could independently impact the SBS stock of polar bears sometime in the future does not preclude the issuance of this ITR.

Comment 145: One commenter suggested that the Service should conduct a more thorough site-specific analysis of impacts to polar bears and their ESA-designated critical habitat.

Response: We disagree. As explained in the proposed rule, and affirmed in this final rule, the Service conducted a robust analysis of potential impacts to polar bears and their habitat under this rulemaking. Further, and as we acknowledged in the proposed rule, the Service recognized that the proposed regulation could impact polar bears and their ESA-designated critical habitat. Therefore, prior to finalizing this regulation, the Service conducted an intra-Service ESA section 7 consultation on our proposed regulation. The ESA section 7 biological opinion and its determinations issued prior to finalizing these regulations is available as a supporting document in the *www.regulations.gov* docket as well as on the web at: *https://ecos.fws.gov/ecp/report/biological-opinion.*

Comment 146: One commenter suggested that the Service should include an environmental impact statement as part of their authorization.

Response: We disagree. As explained in the proposed rule, and affirmed in this final rule, the Service fully

complied with our NEPA responsibilities and determined that the preparation of an EIS was not required for these regulations. Additionally, the Service notes that the polar bear is considered threatened, not endangered, under the ESA. The Service likewise fully complied with the consultation requirements under section 7 of the ESA, finalizing this regulation only after receipt of required determinations under that consultation.

Comment 147: One commenter suggested that the Service should broaden the purpose and need specified in the EA in order to consider additional alternatives for their environmental analysis.

Response: The Service's statement of purpose and need is appropriate and not impermissibly narrow. Further explanation of the Service's efforts to identify other reasonable alternatives is provided in the final EA. The Service's summaries of (1) its early coordination with AOGA, which resulted in AOGA revising its Request in a manner that further limited the scope of its specified activities, and (2) its analysis conducted under the MMPA's least practicable adverse impacts standard further established that the Service complies with the letter and spirit of NEPA's requirement to analyze all reasonable alternatives.

Comment 148: One commenter suggested that the Service should clarify the EA's purpose and need to ensure that these statements are consistent with the Service's requirements under the MMPA and these statements are separate from the applicant's interests.

Response: The Service's EA reflects the fact that the agency's interest is distinct from the applicant's. The Service's interest is in fulfilling its obligations under the MMPA and taking a hard look at its proposed action under NEPA. The Service will render its decision based on the relevant statutory and regulatory authorities whether or not that decision is in the applicant's interest.

Comment 149: One commenter suggested that the Service should revise the purpose and need statements in the EA to clarify that the environmental impact analysis was conducted to limit impacts of Industry activities on polar bears and walruses rather than supporting the ITR determinations for authorization.

Response: The Service did not ''predetermine'' anything in this process. The Service's EA analyzes the potential impacts of a proposed action, *i.e.,* issuing an ITR, and not a decision that was already made. Were the Service (on the basis of its own initial review or additional information submitted via public comment) to find itself unable to make the requisite determinations under the MMPA, it would not issue a final ITR. While this much is clear from the larger context of the proposed ITR and draft EA, the Service has revised the final EA so as to review any reasonable implication to the contrary.

Comment 150: One commenter suggested that the Service should consider as alternatives in their EA additional mitigation measures that include restricting Industry activities during the polar bear denning season, implementing a buffer around denning habitat, and only authorizing Industry activities that are compliant with the Nation's climate goals to limit global warming.

Response: The Service has worked with the applicant to identify areas of high denning density and incorporate later start dates for seismic activity in this region. We also worked with the applicant to develop ideal temporal windows for maternal denning surveys.

While further restrictions of operations during winter and implementation of a buffer around all potential denning habitat are not practicable given the location of existing facilities and roads that must be utilized during winter to ensure the continuity of operations and protection of tundra and wetlands, the ITR contemplates a suite of mitigation measures to protect denning bears (*i.e.,* avoidance measures, multiple AIR surveys, exclusion zones around known or putative dens). Since the Service does not have authority to approve or disapprove the oil and gas activities themselves, it cannot pick and choose which activities may continue in order to meet climate goals.

Comment 151: One commenter suggested that the Service should clarify how the physical environment will be impacted by Industry activities in the EA.

Response: The commenter appears to unduly conflate potential impacts from the proposed action—*i.e.,* issuing an ITR—with potential impacts from the underlying oil and gas activities, which the Service does not authorize and which are not an effect of the action. In developing the EA, the Service considered whether issuing the ITR and authorizing the incidental take contemplated therein would cause any reasonably foreseeable impacts to the physical environment, and reasonably determined that it would not. None of the on-the-ground activities cited in the comment would be approved by the Service or caused by the ITR.

Comment 152: One commenter suggested that the Service should address how additional oil and gas activities will impact the climate as part of the EA.

Response: The scope of the EA is to describe impacts from the Federal action of issuing the ITR. Effects of the oil and gas activities themselves, to include upstream and downstream GHG emissions, are not effects of the Service's Proposed Action.

Mitigation Measures

Comment 153: One commenter suggested that the Service should include mitigation measures that restrict Industry activities.

Response: While reviewing prior iterations of AOGA's Request, the Service discussed the appropriateness of further limiting the scope of AOGA's specified activities so as to reduce the potential taking of polar bears. AOGA subsequently made several revisions to its Request, which the Service accounted for in its analyses under the MMPA and NEPA. The Service also attempted to identify further operational restrictions in satisfaction of the MMPA's least practicable adverse impacts standard and NEPA's requirement to analyze reasonable alternatives and mitigation measures. The results of those efforts are described in the various analyses supporting the ITR process.

Comment 154: One commenter suggested that the Service should address the inconsistency in the number of required AIR surveys in the EA and ITR.

Response: We will provide further clarification in the EA on the number of AIR flights required for each activity.

Comment 155: One commenter suggested that the Service should revise the mitigation measure at proposed § 18.126(d)(2) to include ''safe and operationally possible'' in regards to maintaining the minimum aircraft flight altitude.

Response: We have made this revision.

Comment 156: One commenter suggested that the Service should revise the mitigation measure at § 18.126(4)(c)(1) to include that vessel crew members may also qualify as dedicated marine mammal observers in order to accommodate vessels with limited crew capacity.

Response: The Service recognizes the limited crew member capacity aboard certain vessels and that it may not always be possible to take on an additional crew member to conduct watches for marine mammals. Requirements for marine mammal observers will be evaluated upon submission of applications for LOAs.

Comment 157: One commenter suggested that the Service should consider additional infrared technology alternatives in addition to AIR in order to increase the detectability of polar bear dens.

Response: AIR efficacy rates used in our estimates for take of denning bears were based upon surveys using both helicopters and fixed wing aircraft. AOGA proposed using only fixed wing aircraft for IR so that is what the Service analyzed. While visual observations and on-the-ground surveys are commonly implemented mitigation measures in addition to AIR surveys, we currently lack the data needed to analyze the den detection efficacy rates of visual and handheld infrared methods.

Comment 158: One commenter suggested that the Service should clarify the required mitigation measures regarding offshore seismic surveys.

Response: No offshore seismic operations were included in the proposed activities, thus take will not be authorized for offshore seismic projects in this rule. As such the Service did not need to include mitigation measures such as ramp-up and shutdown procedures.

Comment 159: One commenter suggested that the Service should clarify whether the requirement for Industry entities to cooperate with the Service and participate in joint research efforts to assess Industry impacts on marine mammals was removed.

Response: This language was erroneously omitted. We have revised the final rule to include this language.

Comment 160: One commenter suggested that the Service should clarify whether human—polar bear encounters that occur during this regulation period will be submitted to the Polar Bear—Human Information Management System (PBHIMS) in order to contribute to international efforts for polar bear conservation.

Response: The Service represents the United States as a participant in the Polar Bear Range States. We will continue to submit applicable human—polar bear encounter records to PBHIMS as part of our participation in this effort.

Comment 161: One commenter suggested that the Service should request stricter mitigation measures for minimum aircraft flight altitudes and maximum vessel speeds to reduce potential impacts on marine mammals.

Response: The Service has worked with the applicant to develop mitigation measures that create the least practicable adverse impact on polar bears and Pacific walruses. The ITR requires aircraft to fly high enough, and vessels to travel slow enough, to greatly reduce the potential for impacts. Further restrictions were deemed unnecessary to achieve the least practicable adverse impact because they were precluded either by safety considerations or they would not discernably reduce the potential for effects to marine mammals.

Comment 162: Commenters suggested that the Service should request more specific mitigation measures to reduce impacts on marine mammals during project activities.

Response: The ITR already prescribed the means of effecting the least practicable adverse impact on Pacific walruses and SBS polar bears. Further, the Service retains discretion to impose additional mitigation measures on an activity-specific basis through the LOA process.

Comment 163: One commenter suggested that the Service should address how the requested mitigation measures reduce Industry impacts on polar bear and walrus and their habitat.

Response: The Service has worked with the applicant to identify areas of high denning density and incorporate later start dates for seismic activity in this region. We also worked with the applicant to develop ideal temporal windows for maternal denning surveys. These mitigation measures have been designed to impart the least practicable adverse impact from the proposed activities on polar bears.

Comment 164: One commenter suggested that the Service should evaluate the effectiveness of monitoring by protected species observers (PSOs) to detect marine mammals during periods of restricted visibility.

Response: While we acknowledge some weather conditions may hinder their ability to identify animals, the Service believes that PSOs contribute information important to the safety of humans, polar bears, and Pacific walruses.

Comment 165: One commenter suggested that the Service should revise language in the mitigation measures to be more specific about Industry activity restrictions in order to reduce impacts on marine mammals.

Response: There is an iterative process of communication between the Service and applicants when applying for individual LOAs and upon the receipt of results from maternal den surveys. The Service is unaware of the exact location dens may be occurring each year and is unable to make specific regulations based on these locations.

Comment 166: One commenter suggested that the Service should consider all habitat characterized by a 1-meter elevation difference and a slope of eight degrees or greater as suitable polar bear denning habitat that should be avoided by Industry activities.

Response: The applicant is required to consult the USGS map of potential denning habitat prior to activities. Mitigation measures outlined by the ITR must also be implemented to reduce disturbance to unknown dens.

Comment 167: One commenter suggested that the Service should request that all Industry entities should hire PSOs to monitor Industry impacts on marine mammals.

Response: Hiring of separate PSOs is not always practicable for the applicant's proposed activities. The Service has included training, monitoring, and reporting requirements in the rule.

Comment 168: One commenter suggested that the Service should consider designating certain areas that are important to marine mammals as off-limits to Industry activities.

Response: We appreciate the recommendation and will continue to research and incorporate innovative measures for achieving the least practicable impact in future ITRs.

Comment 169: One commenter suggested that the Service should request a 1-mile buffer around all suitable polar bear denning habitat in order to prevent Industry activities disturbing undetected polar bear dens and reduce impacts to denning polar bears.

Response: Proper denning habitat requires the creation of snow drifts, which can differ from year-to-year as it is based on terrain and weather conditions. The ability to identify areas in which these snow drifts may occur each year prior to operations is not practicable.

Comment 170: One commenter suggested that the Service should analyze the results of polar bear den monitoring AIR surveys and human–polar bear encounters reported during this regulation period in a timely manner in order to better evaluate the effectiveness of the requested mitigation measures.

Response: We appreciate the recommendation.

Comment 171: One commenter suggested that the Service should request that Industry activities be shut down if an injured or dead walrus or polar bear is reported and activities not resume until the Service investigates the circumstances that caused the injury or death of the walrus or polar bear.

Response: The Service has included in the rule a reporting requirement upon the injury or death of a walrus of polar bear as soon as possible but within 48 hours. While it may aid in any

subsequent investigation, ceasing activities in an active oil field may not be practicable or safe in certain circumstances, and thus will not be mandated.

Comment 172: One commenter suggested that the Service should clarify their definition for a concentration or group of walruses or polar bears, and the commenter recommended this definition be two or more individuals.

Response: We have added this revision.

Comment 173: Paragraph 4 under ''Mitigation measures for operational and support vessels'' notes the 1 July date to allow oil and gas vessels to enter the Beaufort Sea, which is based on past information that could become less relevant and accurate in the future. We recommend the Service consider other metrics to meet the intention of this measure. A more flexible approach, for example, would be to restrict entry into the Beaufort Sea until a sufficient percentage of shorefast ice has melted.

Response: We have considered this request and recognize that in the future changing sea ice conditions, especially if the impacts of climate change are not ameliorated, may reflect a different metric. However, and because these regulations are issued for a period of 5 years only, at this time we believe the July 1 date best reflects our current understanding of sea ice changes. We also have determined that providing this date will provide better certainty to the regulated public for planning purposes.

Comment 174: One commenter suggested that the Service should account for polar bears becoming habituated to Industry activities to avoid overestimating take.

Response: We are not aware of any studies that have shown that bears become habituated to humans after denning in industrial areas or that this type of habituation leads to reduced disturbance. If the information existed, we would have incorporated it into the model. Harassment rate calculations incorporated the Service's polar bear sighting database, which contains all reports of Industry sightings of walrus and polar bears (as directed by the Service of all LOA holders). Assuming the practices of training, monitoring, and adaptive measures have previously been implemented, the sightings data would have somewhat incorporated their implementation. However, at this time there is no way to explicitly incorporate this data into the analysis.

Comment 175: One commenter suggested that the Service should account for the effectiveness of mitigation measures in their take estimations in order to avoid overestimating the number of incidental takes of polar bears during Industry activities.

Response: We agree that mitigation measures are important for reducing disturbance to polar bears, and we currently require each applicant to have a polar bear interaction plan and to have taken approved polar bear deterrence training. However, it is unclear how to integrate the measures into our quantitative modeling approach. The implementation of these mitigation measures is key to ensuring the least practicable adverse impact on polar bears and Pacific walrus as directed by the MMPA.

Policy and Procedure

Comment 176: This proposed ITR appears to include new information requirements from applicants seeking LOAs. New items include: (1) A digital geospatial file of the project footprint, (2) estimates of monthly human occupancy of the project area, and (3) dates of AIR surveys if such surveys are required. However, the text in the actual proposed rule, *i.e.,* §§ 18.122–18.123, does not clearly indicate a requirement for these items. We recommend that this requirement be clarified in the final rule. Similarly, the preamble of the proposed rule introduces a new concept of ''monthly human occupancy''; however, this new concept as written may be confusing, and we similarly recommend that it be better described in the final rule to ensure applicants can provide the requested information.

Response: We have revised this final rule to clarify information requirements from applicants for LOAs and have clarified our discussion regarding monthly human occupancy.

Comment 177: Section 18.126(b)(4) of the proposed regulation states that applicants will restrict timing of the activity to limit disturbance around dens. We recommend clarifying whether this will apply to an unoccupied den, putative dens, or verified occupied dens only and describing what types of timing restrictions can be expected.

Response: We agree and have added clarifying language to § 18.126(b)(4) of this final rule.

Comment 178: The term ''other substantially similar'' activities is used in the title of subpart J of the proposed rule as well as in §§ 18.119, 18.121, 18.122, and 18.124. This term follows the description of the activities from which take may occur but is not found in the preamble text. We recommend the Service provide examples of these activities in the proposed rule or define this term in the preamble to add clarity.

Response: We agree and have revised this final rule to provide clarity.

Comment 179: The proposed ITR incorrectly reflects the numbers of leases and land area covered by those leases in the NPR–A.

Response: We agree. This final rule has been revised to reflect 307 leases covering 2.6 million acres.

Comment 180: In regard to compliance with international conservation agreements, one commenter suggested that the Service should consider transboundary impacts on polar bears under international polar bear conservation agreements.

Response: While we acknowledge polar bears in the Southern Beaufort Sea move between the United States and Canada, our analysis determined that authorizing the Level B harassment of a small number of polar bears in the Beaufort ITR region will not have any transboundary impacts, much less impacts that violate international obligations. The Service has also reasonably determined that these Level B harassments will not have any unmitigable adverse impacts on the availability of SBS polar bears for subsistence uses. Additionally, while we acknowledge the important management provisions accomplished under the 1988 Inuvialuit-Inupiat Polar Bear Management Agreement, we note that this is a voluntary agreement and therefore not binding on the U.S. Government.

Comment 181: One commenter suggested that the Service should evaluate activity impacts for a larger geographic region that extends beyond areas of Industry activity.

Response: The Service has conducted a thorough and robust analysis using the best available science to calculate the number of incidental harassments of polar bears and walrus due to Industry activities within the specified geographical region. The ITR refers specifically to ''the area of Industry activity'' as it is the source of the impact, which is not uniformly distributed across the specified geographical region. The Service is unable to calculate take from Industry activities in areas where Industry activities do not occur within the specified geographical region. While the range of a species may be larger than the specified activity area, the distribution is rarely (if ever) uniform within that space, especially in migratory species. Small numbers determinations are based on the number of individual bears exhibiting a Level B response and the appropriate stock population estimate.

Comment 182: One commenter suggested that the Service did not

provide the allotted time for the public comment period that is specified in the MMPA, APA, and NEPA regulations.

Response: The Service provided the public with a sufficient opportunity to comment on the proposed ITR and draft EA. The numerous, in-depth public comments that the Service received on the proposed ITR modeling analysis appear to corroborate the Service's judgment on this issue. ITRs establish important mitigation measures and provide significant conservation benefits to polar bears, and it is important that the Service finish its process and render a decision in a timely manner.

We also note that the commenter has in fact had access to the referenced 57 case studies—which were provided as part of the administrative record in the Willow litigation in which they are a plaintiff—for several months. These studies have also been in the Service's Freedom of Information Act reading room for the duration of the proposed ITR comment period. With respect to the Woodruff and Wilson study, the Service gained access to a draft manuscript and preliminary results during the later stages of development of the proposed ITR and thought it was important to include this information as part of the best available scientific evidence. Although we expected a final manuscript would be available for public release prior to publication of the proposed ITR, this did not occur. In the interest of providing information for public review, the Service then developed its own summary of relevant findings and uploaded that summary to the docket as soon as it could. The Service adjusted the assumed AIR efficacy rate utilized in the ITR process based on this new information. Because the results of this study suggest an efficacy rate lower than that previously assumed, the Service's integration of this information resulted in a slight downward refinement of the assumed AIR efficacy rate.

Comment 183: One commenter suggested that the Service should include a list of entities conducting activities under this authorization and a description with the accompanying analysis of expected impacts from these Industry activities in the authorization.

Response: No entities may conduct activities under coverage of this ITR until they receive an LOA from the Service. The ITR provides sufficient description of the specified activities and those entities that qualify for LOAs.

Comment 184: One commenter suggested that the Service should include a list of specific oil and gas activities that the Service evaluated and that would be authorized under LOAs issued under these regulations.

Response: The description of specified activities provided in the ITR is sufficiently detailed. Additional information is available in AOGA's request.

Comment 185: One commenter suggested that the Service should revise their language to exclude listing specific subsistence communities or organizations that may be consulted during a Plan of Cooperation and add a general requirement in order to avoid potentially excluding other communities or organizations.

Response: Comment noted.

Comment 186: One commenter suggested that the Service should complete government-to-government consultations with Alaska Native communities to ensure that the Service mitigates the impacts on subsistence use of marine mammals prior to finalizing this ITR.

Response: The Service has determined that issuing this ITR would not cause any potential effects that trigger the obligation to engage in government-to-government consultation or government-to-ANCSA (Alaska Native Claims Settlement Act) corporation consultation. The effects of the Service's action is limited; it only authorizes the Level B harassment of small numbers of polar bears. Any resulting effects to individual polar bears would be inherently limited and short-term and, as explained in more detail elsewhere, would not cause more than a negligible impact to the SBS stock of polar bears and or any unmitigable adverse impacts on the availability of SBS polar bears for subsistence uses. As such, the Service has determined that promulgating this ITR will not have any substantial direct effects on any federally recognized Tribes or ANCSA corporations.

That said, in the interest of cooperation and ensuring that the views and concerns of Alaska Native communities are heard and considered in its decision-making process, the Service sent notification of its proposed action to promulgate the ITR to federally recognized tribes and ANCSA corporations with interests in the Beaufort ITR area and surrounding areas on May 27, 2021. The Service did not receive any replies indicating interest in government-to-government consultation or government-to-ANCSA corporation consultation. The Service remains open to consulting with these parties at any time, including prior to the issuance of LOAs and further notes the regulatory requirement that LOA applicants conduct their own outreach with potentially affected subsistence communities. While the commenter is correct that communications with Industry are not government-to-government consultations or government-to-ANCSA corporation consultations, such communications have proven to be a productive means of resolving potential conflicts and identifying issues that may warrant formal consultation with the Service.

Comment 187: One commenter suggested that the Service should reconsider whether Industry activities will have an unmitigable adverse impact on subsistence use of marine mammals considering the limit on the harvest of SBS polar bears due to their declining population abundance.

Response: The Service disagrees. The ITR concludes that there will be no unmitigable adverse impacts on the availability of polar bears and has relied on the best scientific information available, monitoring data, locations of hunting areas relative to Industry activities, community consultation, Plans of Cooperation, and harvest records to reach this conclusion.

Comment 188: One commenter suggested that the Service should reconsider whether the addition of new Industry facilities and infrastructure will correlate with an increase in incidental harassment of polar bears.

Response: We disagree. While AOGA has drawn a contrary conclusion in their Request, the relationship described by the Service between distance to shore and polar bear encounters indicates an increase in coastal infrastructure will increase the number of encounters and subsequent harassment events. This was described at length within the ITR.

Comment 189: Commenters suggested that the Service should clarify their explanation for the lack of an oil spill risk assessment.

Response: Please note that the Service does not authorize the incidental take of marine mammals as the result of illegal actions, such as oil spills. A detailed, activity-specific analysis of potential take arising from a hypothetical oil spill is beyond the scope of this ITR. That said, the Service did consider available oil spill risk assessments to inform its ITR analysis. References to the various materials considered by the Service are provided in the ITR. While we used a timeframe ending in 1999 to present one summary statistic, we also considered data as recent as 2020. BOEM's OSRA represents the best available information on the risk of oil spills to polar bears in the Southern Beaufort Sea. We detailed a sample of cases of recent onshore oil spills and potential effects on polar bears. The commenter is correct that the

focus of our oil spill analysis was on large oil spills greater than 1,000 barrels. Spills less than 1,000 barrels are unlikely to cause the widespread impacts discussed in the oil spill analysis. Industry is required to notify multiple agencies, including the Service, of all spills on the North Slope and coordinates spill response accordingly. Lastly, as explained in the ITR, ''no major offshore oil spills have occurred in the Alaska Beaufort Sea. Although numerous small onshore spills have occurred on the North Slope, to date, there have been no documented effects to polar bears''.

Comment 190: One commenter suggested that the Service should clarify the requirement for Industry entities to submit a Plan of Cooperation.

Response: We agree. The Service included this information in the Description of Letters of Authorization section of the proposed and this final rule.

Comment 191: One commenter suggested that the Service should request Industry entities to engage in outreach with subsistence communities, including communities in the Bering Strait and Chukchi Sea, to ensure Industry vessel activity does not interfere with subsistence activities.

Response: While the Service has included vessel traffic restrictions in the ITR as a precautionary measure, AOGA has not requested take authorizations for vessel activity through the Bering Strait and Chukchi Sea; therefore, no take has been estimated or authorized for these activities.

Comment 192: One commenter suggested that the Service should suspend the proposed rulemaking and request AOGA to submit a revised request that addresses shortcomings before moving forward with this action.

Response: Thank you for the recommendation, but the Service already determined AOGA's revised request to be adequate and complete and finds no basis for requiring further revisions.

Comment 193: One commenter suggested that the Service should be more collaborative with NMFS in order to develop, review, and implement acoustic and behavior thresholds for marine mammal species.

Response: Comment noted.

Required Determinations

Treaty Obligations

This ITR is consistent with the 1973 Agreement on the Conservation of Polar Bears, a multilateral treaty executed in Oslo, Norway, among the Governments of Canada, Denmark, Norway, the Soviet Union, and the United States. Article II of this Polar Bear Agreement lists three obligations of the Parties in protecting polar bear habitat. Parties are obliged to: (1) Take appropriate action to protect the ecosystem of which polar bears are a part; (2) give special attention to habitat components such as denning and feeding sites and migration patterns; and (3) manage polar bear subpopulations in accordance with sound conservation practices based on the best available scientific data.

This rule will further consistency with the Service's treaty obligations through incorporation of mitigation measures that ensure the protection of polar bear habitat. Any LOAs issued pursuant to this rule would adhere to the requirements of the rule and would be conditioned upon including area or seasonal timing limitations or prohibitions, such as placing 1.6-km (1-mi) avoidance buffers around known or observed dens (which halts or limits activity until the bear naturally leaves the den) and monitoring the effects of the activities on polar bears. Available denning habitat maps are provided by the USGS.

National Environmental Policy Act (NEPA)

Per the National Environmental Policy Act (NEPA; 42 U.S.C. 4321, *et seq.*), the Service must evaluate the effects of the proposed action on the human environment. We have prepared an environmental assessment (EA) in conjunction with this rulemaking and have concluded that the issuance of an ITR for the nonlethal, incidental, unintentional take by harassment of small numbers of polar bears and Pacific walruses in Alaska during activities conducted by the applicant is not a major Federal action significantly affecting the quality of the human environment. A copy of the EA and the Service's FONSI can be obtained from the locations described in **ADDRESSES**.

Endangered Species Act

Under the ESA, all Federal agencies are required to ensure the actions they authorize are not likely to jeopardize the continued existence of any threatened or endangered species or result in destruction or adverse modification of critical habitat. In 2008, the Service listed the polar bear as a threatened species under the ESA (73 FR 28212, May 15, 2008) and later designated critical habitat for polar bear subpopulations in the United States, effective January 6, 2011 (75 FR 76086, December 7, 2010). Consistent with these statutory requirements, prior to issuance of this final ITR, we completed intra-Service section 7 consultation regarding the effects of these regulations on polar bears with the Service's Fairbanks' Ecological Services Field Office. The Service has found the issuance of the ITR will not jeopardize the continued existence of polar bears or adversely modify their designated critical habitat, nor will it affect other listed species or designated critical habitat. The evaluations and findings that resulted from this consultation are available on the Service's website and at *https://www.regulations.gov.*

Regulatory Planning and Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules for a determination of significance. OMB has designated this rule as not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, reduce uncertainty, and 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. Executive Order 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.

OIRA bases its determination of significance upon the following four criteria: (a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government; (b) whether the rule will create inconsistencies with other Federal agencies' actions; (c) whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients; (d) whether the rule raises novel legal or policy issues.

Expenses will be related to, but not necessarily limited to: The development of requests for LOAs; monitoring, recordkeeping, and reporting activities conducted during Industry oil and gas operations; development of polar bear interaction plans; and coordination with Alaska Natives to minimize effects of operations on subsistence hunting.

Compliance with the rule is not expected to result in additional costs to Industry that it has not already borne under all previous ITRs. Realistically, these costs are minimal in comparison to those related to actual oil and gas exploration, development, and production operations. The actual costs to Industry to develop the request for promulgation of regulations and LOA requests probably do not exceed $500,000 per year, short of the ''major rule'' threshold that would require preparation of a regulatory impact analysis. As is presently the case, profits will accrue to Industry; royalties and taxes will accrue to the Government; and the rule will have little or no impact on decisions by Industry to relinquish tracts and write off bonus payments.

Small Business Regulatory Enforcement Fairness Act

We have determined that this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule is also not likely to result in a major increase in costs or prices for consumers, individual industries, or government agencies or have significant adverse effects on competition, employment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

We have also determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Oil companies and their contractors conducting exploration, development, and production activities in Alaska have been identified as the only likely applicants under the regulations, and these potential applicants have not been identified as small businesses. Therefore, neither a regulatory flexibility analysis nor a small entity compliance guide is required.

Takings Implications

This rule does not have takings implications under Executive Order 12630 because it authorizes the nonlethal, incidental, but not intentional, take of walruses and polar bears by Industry and thereby, exempts these companies from civil and criminal liability as long as they operate in compliance with the terms of their LOAs. Therefore, a takings implications assessment is not required.

Federalism Effects

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132. The MMPA gives the Service the authority and responsibility to protect walruses and polar bears.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. This rule will not produce a Federal mandate of $100 million or greater in any year, *i.e.,* it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Government-to-Government Coordination

It is our responsibility to communicate and work directly on a Government-to-Government basis with federally recognized Tribes in developing programs for healthy ecosystems. We are also required to consult with Alaska Native Corporations. We seek their full and meaningful participation in evaluating and addressing conservation concerns for protected species. It is our goal to remain sensitive to Alaska Native culture and to make information available to Alaska Natives. Our efforts are guided by the following policies and directives:

(1) The Native American Policy of the Service (January 20, 2016);

(2) the Alaska Native Relations Policy (currently in draft form);

(3) Executive Order 13175 (January 9, 2000);

(4) Department of the Interior Secretarial Orders 3206 (June 5, 1997), 3225 (January 19, 2001), 3317 (December 1, 2011), and 3342 (October 21, 2016);

(5) the Department of the Interior's policies on consultation with Tribes and with Alaska Native Corporations; and

(6) the Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships (January 21, 2021).

We have evaluated possible effects of the ITR on federally recognized Alaska Native Tribes and corporations and have concluded the issuance of the ITR does not require formal consultation with Alaska Native Tribes and corporations. Through the ITR process identified in the MMPA, the AOGA has presented a communication process, culminating in a POC if needed, with the Native organizations and communities most likely to be affected by their work. The applicant has engaged these groups in informational communications. We invite continued discussion about the ITR and sent an outreach letter regarding this ITR to Alaska Native Tribes and corporations on May 27, 2021.

In addition, to facilitate co-management activities, the Service maintains cooperative agreements with the Eskimo Walrus Commission (EWC) and the Qayassiq Walrus Commission (QWC) and is working towards developing such an agreement with the newly formed Alaska Nannut Co-Management Council (ANCC). The cooperative agreements fund a wide variety of management issues, including: Commission co-management operations; biological sampling programs; harvest monitoring; collection of Native knowledge in management; international coordination on management issues; cooperative enforcement of the MMPA; and development of local conservation plans. To help realize mutual management goals, the Service, EWC, ANCC, and QWC regularly hold meetings to discuss future expectations and outline a shared vision of co-management.

The Service also has ongoing cooperative relationships with the North Slope Borough and the Inupiat-Inuvialuit Game Commission where we work cooperatively to ensure that data collected from harvest and research are used to ensure that polar bears are available for harvest in the future; provide information to co-management partners that allows them to evaluate harvest relative to their management agreements and objectives; and provide information that allows evaluation of the status, trends, and health of polar bear subpopulations.

Civil Justice Reform

The Department's Office of the Solicitor has determined that these regulations do not unduly burden the judicial system and meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501

et seq.). OMB has previously approved the information collection requirements associated with incidental take of marine mammals and assigned OMB control number 1018–0070 (expires January 31, 2022). 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.

Energy Effects

Executive Order 13211 requires agencies to prepare statements of energy effects when undertaking certain actions. This rule provides exceptions from the MMPA's taking prohibitions for Industry engaged in specified oil and gas activities in the specified geographic region. By providing certainty regarding compliance with the MMPA, this rule will have a positive effect on Industry and its activities. Although the rule requires Industry to take a number of actions, these actions have been undertaken by Industry for many years as part of similar past regulations. Therefore, this rule is not expected to significantly affect energy supplies, distribution, or use and does not constitute a significant energy action. No statement of energy effects is required.

References

For a list of the references cited in this rule, see Docket No. FWS–R7–ES–2021–0037, available at *http://www.regulations.gov.*

List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Alaska, Imports, Indians, Marine mammals, Oil and gas exploration, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

For the reasons set forth in the preamble, the Service amends part 18, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below.

PART 18—MARINE MAMMALS

■ 1. The authority citation of part 18 continues to read as follows:

Authority: 16 U.S.C. 1361 et seq.

■ 2. Revise subpart J of part 18 to read as follows:

Subpart J—Nonlethal Taking of Marine Mammals Incidental to Oil and Gas Exploration, Development, and Production Activities in the Beaufort Sea and Adjacent Northern Coast of Alaska

Sec.

18.119 Specified activities covered by this subpart.
18.120 Specified geographic region where this subpart applies.
18.121 Dates this subpart is in effect.
18.122 Procedure to obtain a Letter of Authorization (LOA).
18.123 How the Service will evaluate a request for a Letter of Authorization (LOA).
18.124 Authorized take allowed under a Letter of Authorization (LOA).
18.125 Prohibited take under a Letter of Authorization (LOA).
18.126 Mitigation.
18.127 Monitoring.
18.128 Reporting requirements.
18.129 Information collection requirements.

§ 18.119 Specified activities covered by this subpart.

Regulations in this subpart apply to the nonlethal incidental, but not intentional, take of small numbers of polar bear and Pacific walrus by certain U.S. citizens while engaged in oil and gas exploration, development, and production activities in the Beaufort Sea and adjacent northern coast of Alaska.

§ 18.120 Specified geographic region where this subpart applies.

This subpart applies to the specified geographic region that encompasses all Beaufort Sea waters east of a north-south line through Point Barrow, Alaska (N71.39139, W156.475, BGN 1944), and 80.5 km (50 mi) north of Point Barrow, including Alaska State waters and Outer Continental Shelf waters, and east of that line to the Canadian border.

(a) The offshore boundary of the Beaufort Sea incidental take regulations (ITR) region extends 80.5 km (50 mi) offshore. The onshore region is the same north/south line at Utqiagvik, 40.2 km (25 mi) inland and east to the Canning River.

(b) The Arctic National Wildlife Refuge and the associated offshore waters within the refuge boundaries are not included in the Beaufort Sea ITR region. Figure 1 shows the area where this subpart applies.

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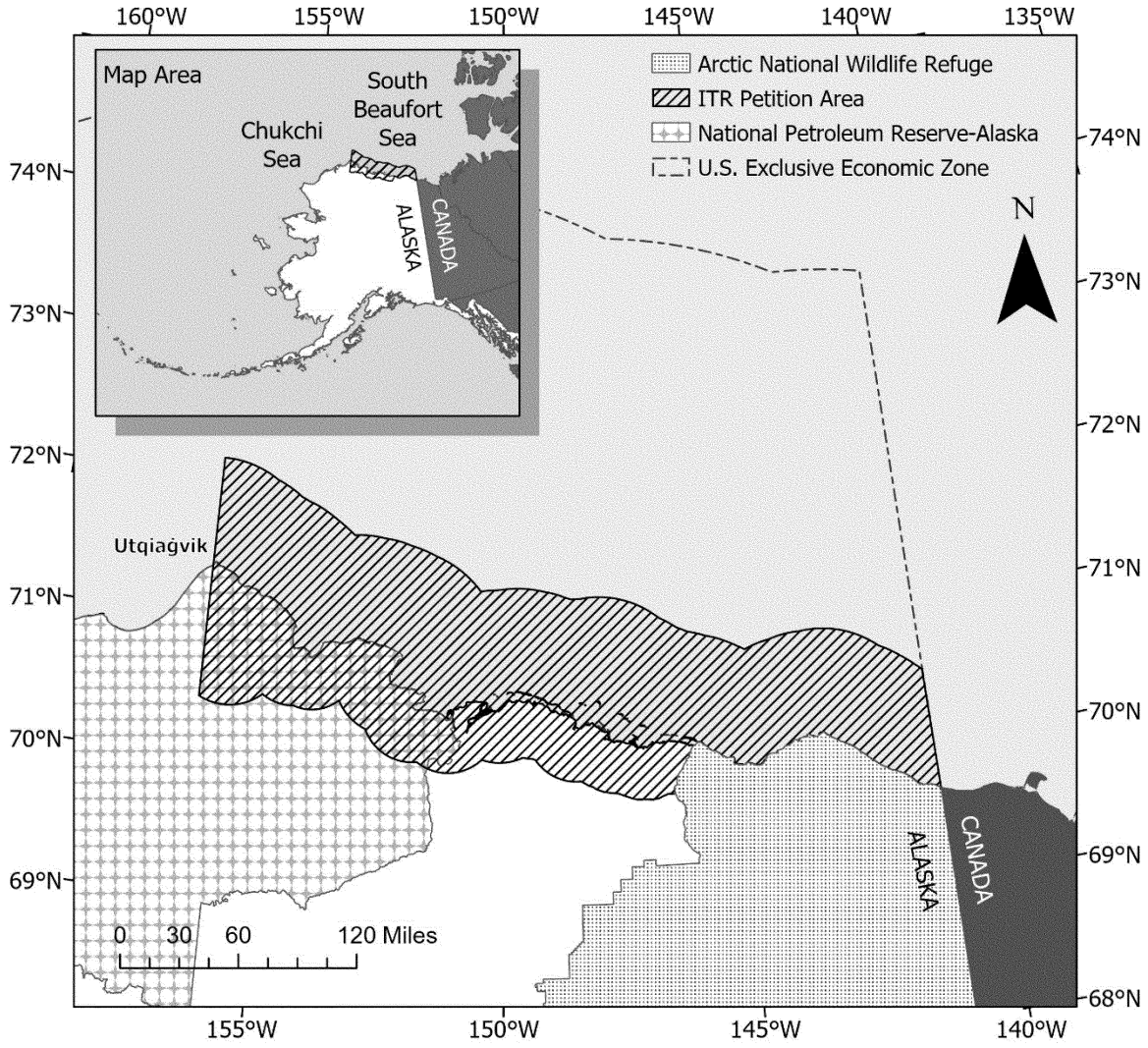
Figure 1 to § 18.120—Map of the Beaufort Sea ITR region



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§ 18.121 Dates this subpart is in effect.

Regulations in this subpart are effective from August 5, 2021, through August 5, 2026, for year-round oil and gas exploration, development, and production.

§ 18.122 Procedure to obtain a Letter of Authorization (LOA).

(a) An applicant must be a U.S. citizen as defined in § 18.27(c) and among:

(1) Those entities specified in the request for this rule as set forth in paragraph (b) of this section;

(2) Any of their corporate affiliates; or

(3) Any of their respective contractors, subcontractors, partners, owners, co-lessees, designees, or successors-in-interest.

(b) The entities specified in the request are the Alaska Oil and Gas Association, which includes Alyeska Pipeline Service Company, BlueCrest Energy, Inc., Chevron Corporation, ConocoPhillips Alaska, Inc., Eni U.S. Operating Co. Inc., ExxonMobil Alaska Production Inc., Furie Operating Alaska, LLC, Glacier Oil and Gas Corporation, Hilcorp Alaska, LLC, Marathon Petroleum, Petro Star Inc., Repsol, and Shell Exploration and Production Company, Alaska Gasline Development Corporation, Arctic Slope Regional Corporation Energy Services, Oil Search (Alaska), LLC, and Qilak LNG, Inc.

(c) If an applicant proposes to conduct oil and gas industry exploration, development, and production in the Beaufort Sea ITR region described in § 18.120 that may cause the taking of Pacific walruses and/or polar bears and wants nonlethal incidental take authorization under the regulations in this subpart J, the applicant must request an LOA. The applicant must submit the request for authorization to the Service's Alaska Region Marine Mammals Management Office (see § 2.2 for address) at least 90 days prior to the start of the activity.

(d) The request for an LOA must comply with the requirements set forth in §§ 18.126 through 18.128 and must include the following information:

(1) A plan of operations that describes in detail the activity (*e.g.,* type of project, methods, and types and numbers of equipment and personnel, etc.), the dates and duration of the activity, and the specific locations of and areas affected by the activity.

(2) A site-specific marine mammal monitoring and mitigation plan to monitor and mitigate the effects of the activity on Pacific walruses and polar bears.

(3) A site-specific Pacific walrus and polar bear safety, awareness, and interaction plan. The plan for each activity and location will detail the

policies and procedures that will provide for the safety and awareness of personnel, avoid interactions with Pacific walruses and polar bears, and minimize impacts to these animals.

(4) A plan of cooperation to mitigate potential conflicts between the activity and subsistence hunting, where relevant. Applicants must provide documentation of communication with potentially affected subsistence communities along the Beaufort Sea coast (*i.e.,* Kaktovik, Nuiqsut, and Utqigvik) and appropriate subsistence user organizations (*i.e.,* the Alaska Nannut Co-Management Council, the Eskimo Walrus Commission, or North Slope Borough) to discuss the location, timing, and methods of activities and identify and mitigate any potential conflicts with subsistence walrus and polar bear hunting activities. Applicants must specifically inquire of relevant communities and organizations if the activity will interfere with the availability of Pacific walruses and/or polar bears for the subsistence use of those groups. Requests for an LOA must include documentation of all consultations with potentially affected user groups. Documentation must include a summary of any concerns identified by community members and hunter organizations and the applicant's responses to identified concerns.

§ 18.123 How the Service will evaluate a request for a Letter of Authorization (LOA).

(a) We will evaluate each request for an LOA based on the specific activity and the specific geographic location. We will determine whether the level of activity identified in the request exceeds that analyzed by us in considering the number of animals estimated to be taken and evaluating whether there will be a negligible impact on the species or stock and an unmitigable adverse impact on the availability of the species or stock for subsistence uses. If the level of activity is greater, we will reevaluate our findings to determine if those findings continue to be appropriate based on the combined estimated take of the greater level of activity that the applicant has requested and all other activities proposed during the time of the activities in the LOA request. Depending on the results of the evaluation, we may grant the authorization, add further conditions, or deny the authorization.

(b) In accordance with § 18.27(f)(5), we will make decisions concerning withdrawals of an LOA, either on an individual or class basis, only after notice and opportunity for public comment.

(c) The requirement for notice and public comment in paragraph (b) of this section will not apply should we determine that an emergency exists that poses a significant risk to the well-being of the species or stocks of polar bears or Pacific walruses.

§ 18.124 Authorized take allowed under a Letter of Authorization (LOA).

(a) An LOA allows for the nonlethal, non-injurious, incidental, but not intentional take by Level B harassment, as defined in § 18.3 and under section 3 of the Marine Mammal Protection Act (16 U.S.C. 1362), of Pacific walruses and/or polar bears while conducting oil and gas industry exploration, development, and production within the Beaufort Sea ITR region described in § 18.120.

(b) Each LOA will identify terms and conditions for each activity and location.

§ 18.125 Prohibited take under a Letter of Authorization (LOA).

Except as otherwise provided in this subpart, prohibited taking is described in § 18.11 as well as:

(a) Intentional take, Level A harassment, as defined in section 3 of the Marine Mammal Protection Act (16 U.S.C. 1362), and lethal incidental take of polar bears or Pacific walruses; and

(b) Any take that fails to comply with this subpart or with the terms and conditions of an LOA.

§ 18.126 Mitigation.

(a) *Mitigation measures for all Letters of Authorization (LOAs).* Holders of an LOA must implement policies and procedures to conduct activities in a manner that affects the least practicable adverse impact on Pacific walruses and/or polar bears, their habitat, and the availability of these marine mammals for subsistence uses. Adaptive management practices, such as temporal or spatial activity restrictions in response to the presence of marine mammals in a particular place or time or the occurrence of Pacific walruses and/or polar bears engaged in a biologically significant activity (*e.g.,* resting, feeding, denning, or nursing, among others), must be used to avoid interactions with and minimize impacts to these animals and their availability for subsistence uses.

(1) All holders of an LOA must:

(i) Cooperate with the Service's Marine Mammals Management Office and other designated Federal, State, and local agencies to monitor and mitigate the impacts of oil and gas industry activities on Pacific walruses and polar bears. Where information is insufficient to evaluate the potential effects of activities on walruses, polar bears, and the subsistence use of these species, holders of an LOA may be required to participate in joint monitoring and/or research efforts to address these information needs and ensure the least practicable impact to these resources.

(ii) Designate trained and qualified personnel to monitor for the presence of Pacific walruses and polar bears, initiate mitigation measures, and monitor, record, and report the effects of oil and gas industry activities on Pacific walruses and/or polar bears.

(iii) Have an approved Pacific walrus and polar bear safety, awareness, and interaction plan on file with the Service's Marine Mammals Management Office and onsite and provide polar bear awareness training to certain personnel. Interaction plans must include:

(A) The type of activity and where and when the activity will occur (*i.e.,* a summary of the plan of operation);

(B) A food, waste, and other ''bear attractants'' management plan;

(C) Personnel training policies, procedures, and materials;

(D) Site-specific walrus and polar bear interaction risk evaluation and mitigation measures;

(E) Walrus and polar bear avoidance and encounter procedures; and

(F) Walrus and polar bear observation and reporting procedures.

(2) All applicants for an LOA must contact affected subsistence communities and hunter organizations to discuss potential conflicts caused by the activities and provide the Service documentation of communications as described in § 18.122.

(b) *Mitigation measures for onshore activities.* Holders of an LOA must undertake the following activities to limit disturbance around known polar bear dens:

(1) *Attempt to locate polar bear dens.* Holders of an LOA seeking to carry out onshore activities during the denning season (November–April) must conduct two separate surveys for occupied polar bear dens in all denning habitat within 1.6 km (1 mi) of proposed activities using aerial infrared (AIR) imagery. Further, all denning habitat within 1.6 km (1 mi) of areas of proposed seismic surveys must be surveyed three separate times with AIR technology.

(i) The first survey must occur between the dates of November 25 and December 15, the second between the dates of December 5 and December 31, and the third (if required) between the dates of December 15 and January 15.

(ii) AIR surveys will be conducted during darkness or civil twilight and not during daylight hours. Ideal

environmental conditions during surveys would be clear, calm, and cold. If there is blowing snow, any form of precipitation, or other sources of airborne moisture, use of AIR detection is not advised. Flight crews will record and report environmental parameters including air temperature, dew point, wind speed and direction, cloud ceiling, and percent humidity, and a flight log will be provided to the Service within 48 hours of the flight.

(iii) A scientist with experience in the in-air interpretation of AIR imagery will be on board the survey aircraft to analyze the AIR data in real-time. The data (infrared video) will be made available for viewing by the Service immediately upon return of the survey aircraft to the base of operations.

(iv) All observed or suspected polar bear dens must be reported to the Service prior to the initiation of activities.

(2) *Observe the exclusion zone around known polar bear dens.* Operators must observe a 1.6-km (1-mi) operational exclusion zone around all putative polar bear dens during the denning season (November–April, or until the female and cubs leave the areas). Should previously unknown occupied dens be discovered within 1 mile of activities, work must cease, and the Service contacted for guidance. The Service will evaluate these instances on a case-by-case basis to determine the appropriate action. Potential actions may range from cessation or modification of work to conducting additional monitoring, and the holder of the authorization must comply with any additional measures specified.

(3) *Use the den habitat map developed by the USGS.* A map of potential coastal polar bear denning habitat can be found at: *https://www.usgs.gov/centers/asc/science/polar-bear-maternal-denning?qt-science_center_objects=4#qt-science_center_objects.* This measure ensures that the location of potential polar bear dens is considered when conducting activities in the coastal areas of the Beaufort Sea.

(4) *Polar bear den restrictions.* Restrict the timing of the activity to limit disturbance around dens, including putative and known dens.

(c) *Mitigation measures for operational and support vessels.* (1) Operational and support vessels must be staffed with dedicated marine mammal observers to alert crew of the presence of walruses and polar bears and initiate adaptive mitigation responses.

(2) At all times, vessels must maintain the maximum distance possible from concentrations of walruses or polar bears. Under no circumstances, other than an emergency, should any vessel approach within an 805-m (0.5-mi) radius of walruses or polar bears observed on land or ice.

(3) Vessel operators must take every precaution to avoid harassment of concentrations of feeding walruses when a vessel is operating near these animals. Vessels should reduce speed and maintain a minimum 805-m (0.5-mi) operational exclusion zone around feeding walrus groups. Vessels may not be operated in such a way as to separate members of a group of walruses (*i.e.,* greater than two) from other members of the group. When weather conditions require, such as when visibility drops, vessels should adjust speed accordingly to avoid the likelihood of injury to walruses.

(4) Vessels bound for the Beaufort Sea ITR region may not transit through the Chukchi Sea prior to July 1. This operating condition is intended to allow walruses the opportunity to move through the Bering Strait and disperse from the confines of the spring lead system into the Chukchi Sea with minimal disturbance. It is also intended to minimize vessel impacts upon the availability of walruses for Alaska Native subsistence hunters. Exemption waivers to this operating condition may be issued by the Service on a case-by-case basis, based upon a review of seasonal ice conditions and available information on walrus and polar bear distributions in the area of interest.

(5) All vessels must avoid areas of active or anticipated walrus or polar bear subsistence hunting activity as determined through community consultations.

(6) In association with marine activities, we may require trained marine mammal monitors on the site of the activity or onboard ships, aircraft, icebreakers, or other support vessels or vehicles to monitor the impacts of oil and gas industry activity on polar bear and Pacific walruses.

(d) *Mitigation measures for aircraft.* (1) Operators of support aircraft shall, at all times, conduct their activities at the maximum distance possible from concentrations of walruses or polar bears.

(2) Aircraft operations within the ITR area will maintain an altitude of 1,500 ft above ground level when safe and operationally possible.

(3) Under no circumstances, other than an emergency, will aircraft operate at an altitude lower than 457 m (1,500 ft) within 805 m (0.5 mi) of walruses or polar bears observed on ice or land. Helicopters may not hover or circle above such areas or within 805 m (0.5 mi) of such areas. When weather conditions do not allow a 457-m (1,500-ft) flying altitude, such as during severe storms or when cloud cover is low, aircraft may be operated below this altitude. However, when weather conditions necessitate operation of aircraft at altitudes below 457 m (1,500 ft), the operator must avoid areas of known walrus and polar bear concentrations and will take precautions to avoid flying directly over or within 805 m (0.5 mile) of these areas.

(4) Plan all aircraft routes to minimize any potential conflict with active or anticipated walrus or polar bear hunting activity as determined through community consultations.

(e) *Mitigation measures for the subsistence use of walruses and polar bears.* Holders of an LOA must conduct their activities in a manner that, to the greatest extent practicable, minimizes adverse impacts on the availability of Pacific walruses and polar bears for subsistence uses.

(1) *Community consultation.* Prior to receipt of an LOA, applicants must consult with potentially affected communities and appropriate subsistence user organizations to discuss potential conflicts with subsistence walrus and polar bear hunting caused by the location, timing, and methods of operations and support activities (see § 18.122 for details). If community concerns suggest that the activities may have an adverse impact on the subsistence uses of these species, the applicant must address conflict avoidance issues through a plan of cooperation as described in paragraph (e)(2) of this section.

(2) *Plan of cooperation (POC).* When appropriate, a holder of an LOA will be required to develop and implement a Service-approved POC.

(i) The POC must include a description of the procedures by which the holder of the LOA will work and consult with potentially affected subsistence hunters and a description of specific measures that have been or will be taken to avoid or minimize interference with subsistence hunting of walruses and polar bears and to ensure continued availability of the species for subsistence use.

(ii) The Service will review the POC to ensure that any potential adverse effects on the availability of the animals are minimized. The Service will reject POCs if they do not provide adequate safeguards to ensure the least practicable adverse impact on the availability of walruses and polar bears for subsistence use.

§ 18.127 Monitoring.

Holders of an LOA must develop and implement a site-specific, Service-approved marine mammal monitoring and mitigation plan to monitor and evaluate the effectiveness of mitigation measures and the effects of activities on walruses, polar bears, and the subsistence use of these species and provide trained, qualified, and Service-approved onsite observers to carry out monitoring and mitigation activities identified in the marine mammal monitoring and mitigation plan.

§ 18.128 Reporting requirements.

Holders of a Letter of Authorization (LOA) must report the results of monitoring and mitigation activities to the Service's Marine Mammals Management Office via email at: *fw7_mmm_reports@fws.gov*.

(a) *In-season monitoring reports.* (1) *Activity progress reports.* Holders of an LOA must:

(i) Notify the Service at least 48 hours prior to the onset of activities;

(ii) Provide the Service weekly progress reports of any significant changes in activities and/or locations; and

(iii) Notify the Service within 48 hours after ending of activities.

(2) *Walrus observation reports.* Holders of an LOA must report, on a weekly basis, all observations of walruses during any industry activity. Upon request, monitoring report data must be provided in a common electronic format (to be specified by the Service). Information in the observation report must include, but is not limited to:

(i) Date, time, and location of each walrus sighting;

(ii) Number of walruses;

(iii) Sex and age (if known);

(iv) Observer name and contact information;

(v) Weather, visibility, sea state, and sea-ice conditions at the time of observation;

(vi) Estimated range at closest approach;

(vii) Industry activity at time of sighting;

(viii) Behavior of animals sighted;

(ix) Description of the encounter;

(x) Duration of the encounter; and

(xi) Mitigation actions taken.

(3) *Polar bear observation reports.* Holders of an LOA must report, within 48 hours, all observations of polar bears and potential polar bear dens, during any industry activity. Upon request, monitoring report data must be provided in a common electronic format (to be specified by the Service). Information in the observation report must include, but is not limited to:

(i) Date, time, and location of observation;

(ii) Number of bears;

(iii) Sex and age of bears (if known);

(iv) Observer name and contact information;

(v) Weather, visibility, sea state, and sea-ice conditions at the time of observation;

(vi) Estimated closest distance of bears from personnel and facilities;

(vii) Industry activity at time of sighting;

(viii) Possible attractants present;

(ix) Bear behavior;

(x) Description of the encounter;

(xi) Duration of the encounter; and

(xii) Mitigation actions taken.

(b) *Notification of LOA incident report.* Holders of an LOA must report, as soon as possible, but within 48 hours, all LOA incidents during any industry activity. An LOA incident is any situation when specified activities exceed the authority of an LOA, when a mitigation measure was required but not enacted, or when injury or death of a walrus or polar bear occurs. Reports must include:

(1) All information specified for an observation report;

(2) A complete detailed description of the incident; and

(3) Any other actions taken.

(c) *Final report.* The results of monitoring and mitigation efforts identified in the marine mammal monitoring and mitigation plan must be submitted to the Service for review within 90 days of the expiration of an LOA, or for production LOAs, an annual report by January 15th of each calendar year. Upon request, final report data must be provided in a common electronic format (to be specified by the Service). Information in the final (or annual) report must include, but is not limited to:

(1) Copies of all observation reports submitted under the LOA;

(2) A summary of the observation reports;

(3) A summary of monitoring and mitigation efforts including areas, total hours, total distances, and distribution;

(4) Analysis of factors affecting the visibility and detectability of walruses and polar bears during monitoring;

(5) Analysis of the effectiveness of mitigation measures;

(6) Analysis of the distribution, abundance, and behavior of walruses and/or polar bears observed; and

(7) Estimates of take in relation to the specified activities.

§ 18.129 Information collection requirements.

(a) We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. OMB has approved the collection of information contained in this subpart and assigned OMB control number 1018–0070. You must respond to this information collection request to obtain a benefit pursuant to section 101(a)(5) of the Marine Mammal Protection Act. We will use the information to:

(1) Evaluate the request and determine whether or not to issue specific Letters of Authorization; and

(2) Monitor impacts of activities and effectiveness of mitigation measures conducted under the Letters of Authorization.

(b) Comments regarding the burden estimate or any other aspect of this requirement must be submitted to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, at the address listed in 50 CFR 2.1.

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2021–16452 Filed 8–4–21; 8:45 am]

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