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The President

National Employer Support of the Guard and Reserve Week, 2021

By the President of the United States of America

A Proclamation

Since our founding, courageous men and women have vowed to serve and defend our country, protect our citizens, and uphold the principles of our Constitution. The citizen Soldiers and Airmen of the National Guard, and the Soldiers, Sailors, Airmen, Marines, and Coast Guardsmen of the Reserve, proudly carry on this tradition today. During National Employer Support of the Guard and Reserve Week, we thank and celebrate the civilian employers whose support of our National Guard and Reserve members helps to sustain our all-volunteer force and our national spirit of service.

National Guard and Reserve members are essential to the safety and security of our Nation, ready to serve at home or abroad at any moment's notice. From working on the frontlines of the COVID-19 pandemic, to responding to storm damage and raging wildfires, to deploying overseas, supporting peacekeeping missions abroad, and conducting multilateral exercises with allies and partner nations, National Guard and Reserve members put their lives on hold—away from both their families and their civilian workplaces—to stand as a shield or a support whenever our country is in need. When they complete their mission, National Guard and Reserve members return to their civilian careers and fulfill their obligation of monthly weekend drills and annual trainings—always ensuring they are ready to answer the next call to serve.

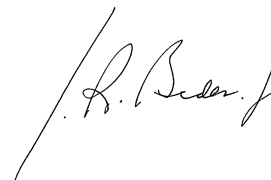
We owe a profound gratitude to our National Guard and Reserve members, as well as their civilian employers. In supporting their talented employees' service to our Nation, employers of National Guard and Reserve members directly contribute to our military readiness and our national security. As our Guard and Reserve members navigate the challenges that accompany their service, many civilian employers go above and beyond to support our service members and their families. National Guard and Reserve members should not have to worry about their civilian employment while they are serving on a mission, and many employers are stepping up with generous pay and leave policies, extension of benefits like health care for family members, and flexibility and support for Guard and Reserve spouses to help fulfill our sacred obligation as a Nation to always take care of those who serve in uniform.

My Administration understands the national security imperative behind improving the well-being of our service members and their families as they balance the pressures of their civilian careers with the demands of military service. Through the First Lady's work with Joining Forces, we are committed to supporting military and veteran families, caregivers, and survivors through economic and entrepreneurship opportunities, support for military child education, and health and well-being resources. Ensuring continuing economic opportunities for military and veteran families through meaningful employment is essential, and we are grateful for all of the employers who understand the value in hiring and retaining National Guard and Reserve members and their spouses.

The Biden family is a National Guard family, and we are forever grateful and in awe of those who, like our son Beau, understand that duty and service to others is what makes us who we are as Americans. We understand some of the unique challenges that National Guard and Reserve members and their families face—challenges that are made smaller because of the incredible, patriotic support of their employers. I encourage all Americans to join me in recognizing and thanking employers of our National Guard and Reserve members for their vast contributions to our economy, our communities, and the success of our Nation and our Armed Forces. I also encourage National Guard and Reserve members to recognize their employers who have gone above and beyond in supporting them with the Employer Support of the Guard and Reserve (ESGR), the Department of Defense program that promotes cooperation and understanding between civilian employers and their National Guard and Reserve employees.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim August 15 through August 21, 2021, as National Employer Support of the Guard and Reserve Week. I call upon the people of the United States, State and local officials, private organizations, and all military commanders to honor employers of National Guard and Reserve members with appropriate ceremonies and activities.

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



Rules and Regulations

Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 315, 316, and 330

RIN 3206-AN86

Hiring Authority for Post-Secondary Students

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing an interim rule, with an opportunity for comment, to amend its career and career-conditional employment regulations. The revision is necessary to implement section 1108 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019, which requires OPM to issue regulations, in interim final form, implementing hiring authorities that allow agencies to hire certain post-secondary students into positions at specified grades in the competitive service. The intended effect of the authority is to provide additional flexibility in hiring eligible and qualified individuals.

DATES:

Effective date: This interim rule is effective September 17, 2021.

Comments due date: OPM must receive comments on or before October 18, 2021.

ADDRESSES: You may submit comments, identified by the docket number or Regulation Identifier Number (RIN) for this proposed rulemaking, by the following method:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for sending comments.

All submissions must include the agency name and docket number or RIN for this rulemaking. Please arrange and identify your comments on the regulatory text by subpart and section number; if your comments relate to the

supplementary information, please refer to the heading and page number. All comments received will be posted without change, including any personal information provided. Please ensure your comments are submitted within the specified open comment period. Comments received after the close of the comment period will be marked “late,” and OPM is not required to consider them in formulating a final decision. Before acting on this proposal, OPM will consider all comments we receive on or before the closing date for comments. Changes to this proposal may be made in light of the comments we receive.

FOR FURTHER INFORMATION CONTACT: Monica Butler at (202) 606-0960, by fax at (202) 606-4430, TDD at (202) 418-3134, or by email at employ@opm.gov.

SUPPLEMENTARY INFORMATION: On August 13, 2018, the President signed Public Law 115-232, the National Defense Authorization Act (NDAA) for Fiscal Year 2019 (*i.e.*, the Act). Section 1108 of the Act established a new hiring authority, codified at 5 U.S.C. 3116, for appointing certain post-secondary students to certain positions in the competitive service. This section also directs OPM to issue regulations to implement this authority. Section 1108 of the Act also established a hiring authority for appointments of college graduates. OPM is issuing regulations to implement the hiring authority for college graduates in a separate notification. (New section 3116 was amended by Pub. L. 116-92, the NDAA for Fiscal Year 2020, which modified 5 U.S.C. 3116(d)(1).)

OPM is issuing interim regulations, with an opportunity for comments, that will create a new subpart I of part 316, title 5, Code of Federal Regulations (CFR), and revise part 330 Recruitment, Selection, and Placement (General).

The interim rule for post-secondary students allows agencies to make time-limited appointments per the statute of eligible individuals directly into the competitive service, without regard to 5 U.S.C. 3309-3319 and 3330. Readers should note that this new hiring authority is separate and distinct from the programs authorized under the Executive Order 13562 (establishing the Pathways Programs, which provide for appointments in the excepted service for Interns, Recent Graduates, and

Presidential Management Fellows as described in 5 CFR part 362).

When using this authority, agencies must provide public notification and follow merit system principles, in accordance with Section 1108, as codified at 5 U.S.C. 3116 (The merit system principles are codified at 5 U.S.C. 2301). Because section 1108 of the Act waives the requirement for OPM to post a vacancy to be filled under this authority that would otherwise apply (5 U.S.C. 3330), agencies are not required to use www.USAJOBS.gov (*i.e.*, USAJOBS) to provide notice of these vacancies. Agencies may wish to use USAJOBS, nevertheless, in light of that system’s ability to assist with the requirement to collect demographic information. Agencies must advertise positions in a manner that provides for “diverse and qualified applicants,” 5 U.S.C. 3116(c)(2)(B), “ensure[s] that potential applicants have appropriate information relevant to the position being filled,” *id.* at 3116(c)(2)(C), and adhere[s] to merit system principles,” *id.* at 3116(c)(2)(A). As indicated in 5 U.S.C. 3116, agencies must determine whether an applicant meets the eligibility requirements for the Post-Secondary Students hiring authority before giving that applicant further consideration. Agencies must then assess whether an eligible applicant meets the government-wide (*i.e.*, OPM-established) or OPM-approved agency-specific minimum qualification standard for the position being filled.

Agencies are not required to provide selection priority to eligible and qualified applicants entitled to selection priority in accordance with 5 CFR part 330, subparts F and G, pertaining to Agency Career Transition Assistance Plans (CTAP) and Interagency Career Transition Assistance Plans (ICTAP). OPM has revised these subparts to include exceptions to these provisions when appointments are made using this Post-Secondary Student authority.

OPM has revised 5 CFR part 315, subpart G, to provide for non-competitive conversion of Post-Secondary students.

Section 1108 of the Act also allows agencies to make appointments without regard to any provision of 5 U.S.C. 3309 through 3319. An agency may select any eligible individual who meets each minimum qualification standard, without regard to the application of

veterans' preference, but, in accordance with new section 3116(c)(2)(A), must adhere to merit system principles, 5 U.S.C. 2301, in so doing. Agencies may appoint individuals under this authority to time-limited appointments in the competitive service at the grade levels specified in 5 U.S.C. 3116.

OPM is adding a new § 316.901 *Agency authority* establishing that an agency may noncompetitively appoint an eligible and qualified post-secondary student to any position in the competitive service, on a time-limited basis, at the General Schedule (GS) 11 level or below (or equivalent). An agency may appoint individuals, on a time-limited basis, to a temporary appointment (for an initial period not to exceed 1 year), or a term appointment (for an initial period expected to last more than 1 year but less than 4 years), to coincide with the individual's academic curriculum and calendar. In either case, an agency may extend an initial appointment for a period that will allow the student to complete his or her degree requirements, provided the criteria for the student appointment continue to be met. Appointments made under this authority, however, are nevertheless subject to the time limitations in 5 CFR part 316, unless the agency obtains OPM's permission to extend in individual cases. For example, an agency hires a student who is expected to complete his or her degree within 8 months. The agency would place the student on a temporary appointment (*i.e.*, the initial appointment is expected to last for up to 1 year). If the student takes longer than expected to complete his or her degree, the agency may extend the initial appointment for up to an additional year, for a total of 24 months. Any extensions beyond 24 months would require OPM approval. As another example an agency hires a student who is expected to complete his or her degree within 18 months. The agency would place the student on a term appointment not to exceed 4 years (*i.e.*, the initial appointment is expected to last for more than 1 year but not more than 4 years). If the student takes longer than expected to complete his or her degree, the agency may extend the initial appointment up to the 4-year limit in increments determined by the agency. The public notification should state that the agency has the option of extending a term appointment made under these provisions up to the 4-year limit. Any extensions beyond the 4-year limit would require OPM approval. Following publication of this rule, OPM will consider crafting a proposed rule to

permit delegation of such extensions to agency heads.

Interim § 316.902 *Eligibility* defines an eligible post-secondary student as an individual who is enrolled or accepted for enrollment in an institution of higher education and pursuing a baccalaureate or graduate degree on at least a part-time basis as determined by the academic institution. An institution of higher education is an entity defined by the Higher Education Act of 1965, in a section codified at 20 U.S.C. 1001(a).

Interim § 316.903 *Qualifications* explains that individuals appointed under this authority must meet the government-wide OPM-prescribed minimum qualification standard, or OPM-approved agency-specific qualification standard, for the position being filled.

Interim § 316.904 *Classification* establishes that positions filled under this authority must be classified under the General Schedule or appropriate pay plan to the -99 series of the appropriate occupational group. This section also explains that positions filled under the Federal Wage System must be classified to the -01 series of the appropriate occupational group. Agencies may refer to OPM's, "Introduction to the Position Classification Standards" at <https://www.opm.gov/policy-data-oversight/classification-qualifications/classifying-general-schedule-positions/positionclassificationintro.pdf> for a definition of these positions. In addition, agencies can refer to the "Handbook of Occupational Groups and Families" available at <https://www.opm.gov/policy-data-oversight/classification-qualifications/classifying-general-schedule-positions/occupationalhandbook.pdf>.

Students may not be promoted while serving on the temporary appointment (*i.e.*, an appointment not expected to exceed 1 year). Students may be converted to a new temporary appointment at a higher grade/band level provided the student meets the qualification requirements for the higher grade/band position.

Interim § 316.905 *Public notification* contains the public notification requirements agencies must follow when using this provision. This section explains that if an agency using this authority does not use USAJOBS to post the position, it must post a job announcement on its home page, or at a minimum, provide a link displayed on the hiring agency's website to the job announcement. Agencies are free to additionally post announcements directly on 3rd party recruitment boards, (*e.g.*, LinkedIn, Monster, Yello) as long as the agency's homepage also

includes a link to a specific announcement. This section also explains that the job announcement must include information about the position being filled to include: The position's title, series, grade level, minimum qualifications, and geographic location; the position's salary; whether the position will be filled on a temporary or term basis (and in the case of a term appointment whether they agency will extend the appointment up to the 4-year limit); whether individuals in the position will be eligible for promotion; the potential for conversion to the agency's permanent workforce; and any pertinent flexibilities that may be offered in conjunction with the position (*e.g.*, telework opportunities or student loan repayments); and information on how to apply. This section also requires the agency to adhere to the merit system principles and perform appropriate recruiting and advertising activities to foster a diverse and qualified applicant pool when using the authority.

Interim § 316.906 *Acquisition of competitive status* explains that competitive status is acquired only upon completion of a probationary period (in accordance with 5 CFR part 315, subpart H), *after* any non-competitive conversion to a permanent appointment pursuant to this subpart. Time spent on a time-limited appointment under this subpart may count toward fulfillment of the probationary period in accordance with 5 CFR 315.802(b).

Interim § 316.907 *Tenure upon appointment* states that an individual appointed under this provision becomes a career or career-conditional employee only upon completion of the individual's academic requirements and non-competitive conversion to a permanent appointment, unless the individual has already satisfied the requirements for career tenure or is exempt from the service requirement in § 315.201.

Interim § 316.908 *Break in program* defines break in program as a period of time when a student is working but is unable to go to school or is neither attending classes nor working at the agency. The intent of the program is for students to either attend classes, work at the agency or both. An agency may use its discretion in either approving or denying a request for a break in program.

Interim § 316.909 *Promotion* explains that post-secondary students appointed for an initial period expected to last more than 1 year but less than 4 years under this part may be promoted noncompetitively provided the

individual meets the qualification requirements for the higher grade position and time in grade requirements in 5 CFR part 300, subpart F, and the job announcement used to fill the original position mentioned the possibility of promotions to higher grade levels. Students on initial appointments for less than 1 year are not eligible for promotion.

Interim § 316.910 *Conversion* establishes that an agency may convert a post-secondary student to a permanent appointment in the competitive service, within that same agency, without further competition if the student has completed the course of study leading to a baccalaureate or graduate degree and meets the qualification standards for the position to which converted. We have added § 315.201(b)(1)(xvii) to indicate that upon conversion, the time served by a post-secondary student under this authority is creditable toward career tenure and may count towards fulfillment of the probationary period in accordance with § 315.802(b).

Interim § 316.911 *Reduction in Force (RIF)*, specifies the tenure groups that post-secondary students are placed in for purposes of 5 CFR part 351. Individuals whose initial appointment is for a period not to exceed 1 year are placed in tenure group 0. Individuals whose initial appointment is for a period expected to last more than 1 year are placed in tenure group III for purposes of 5 CFR part 351.

Interim § 316.912 *Termination* explains that any appointment made under this authority expires upon the not-to exceed date of that appointment, unless the agency extends the appointment prior to expiration, if not earlier. An agency must terminate the appointment of a student after completion of the individual's academic course of study, unless the student is noncompetitively converted to a permanent position in the competitive service as specified in interim § 316.914.

Interim § 316.913 *Numerical limit on the number of appointments* describes the restrictions on the number of appointments an agency may make using this authority in a fiscal year (FY). Section 1115 of the NDAA for FY2020 amended 5 U.S.C. 3116(d), limiting the total number of students eligible to be appointed under the expedited hiring authority for post-secondary students. This section specifies that the number of appointments in any FY may not exceed 15 percent of the number of students appointed during the previous fiscal year to positions at the GS-11 level, or below (or equivalent). An appointing agency may not count appointments made using direct hire authorities, non-

competitive authorities, excepted service authorities (except Pathways Internship Program appointments under § 213.3402 (a) and 5 CFR part 362, subpart B), or selections under merit promotion authorities, when establishing the limit for a given fiscal year. An agency must count hires through programs that provide for conversion to the competitive service after a trial period, such as the Pathways Intern Program. In calculating this limitation agencies may round up or down to the nearest whole number, if necessary, to eliminate a decimal place. Values ending in “.5” or more may be rounded up to the nearest whole number in determining an agency's cap limitation. Values ending in less than “.5” should be rounded down to the nearest whole number in determining an agency's limitation. For example, 15% of 217 is 32.55, which should be rounded up to 33 or 15% of 235 is 35.25, which should be rounded down to 35. This section also provides that OPM may establish a lower percentage limitation based on any factor OPM deems appropriate. OPM shall notify agencies via the OPM website and other venues (such as the Chief Human Capital Officer's Council) of any changes to the numerical limitation, applicable governmentwide. Changes to the numerical limit for an individual agency will be communicated directly to the agency.

Interim § 316.914 *Reporting Requirements*, in paragraph (a), describes the type of data and frequency at which agencies must provide information to the Congress and OPM on their use of this authority. Agencies will be required to provide data on the total number of appointments; the grade levels and occupational series of the positions filled; the numerical limit established for the authority; the number of those appointed who have been separated; recruitment activities; and any difficulties encountered in using the authority. OPM will provide written guidance, around the time this rule is published, describing the means by which agencies should collect this information, the timing of such collections, and the groups as to which information should be collected.

Interim § 316.914(b) establishes that OPM may request from agencies any additional information it deems necessary to further evaluate the impact and effectiveness of this authority.

Interim § 316.915 describes the special provisions on the use of the authority by Department of Defense (DoD) in relation to other DoD specific hiring authorities.

Waiver of Proposed Rulemaking

Section 3116 of title 5, U.S. Code, as enacted by section 1108 of Public Law 115-232, the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019, directs this rulemaking shall be through “interim regulations, with an opportunity to comment.” Therefore, the general notice of proposed rulemaking typically required under 5 U.S.C. 553(b) and 1103(b) is statutorily waived for this rule.

Expected Impact of This Interim Rule

This statute provides Federal agencies with authority to hire interns under a new scheme designed to facilitate an effective pipeline of new prospects for potential permanent appointment to help sustain the Federal workforce. OPM is issuing this rule to implement 5 U.S.C. 3116. This statute establishes a hiring authority for interns into positions at specified grade levels in the competitive service. This regulation allows agencies to make appointments of post-secondary students directly into the competitive service positions, without regard to rating, ranking, veterans' preference, and public notice provisions in 5 U.S.C. 3309-3319 and 3330. The purpose of the authority is to provide a useful tool as part of an overall strategy to implement strategic workforce and recruitment plans.

Costs

This interim final rule will affect the operations of over 80 Federal agencies—ranging from cabinet-level departments to small independent agencies. We estimate that this rule will require individuals employed by these agencies to develop policies and procedures to implement the rule and perform outreach and recruitment activities when using the authority. For the purpose of this cost analysis, the assumed average salary rate of Federal employees performing this work will be the rate in 2021 for GS-14, step 5, from the Washington, DC, locality pay table (\$138,866 annual locality rate and \$66.54 hourly locality rate). We assume that the total dollar value of labor, which includes wages, benefits, and overhead, is equal to 200 percent of the wage rate, resulting in an assumed labor cost of \$133.08 per hour.

In order to comply with the regulatory changes in this interim final rule, affected agencies will need to review the rule and update their policies and procedures. We estimate that, in the first year following publication of the final rule, this will require an average of 250 hours of work by employees with an

average hourly cost of \$133.08. This would result in estimated costs in that first year of implementation of about \$33,270 per agency, and about \$2,661,600 in total Governmentwide. We do not believe this rule will substantially increase the ongoing administrative costs to agencies (including the administrative costs of administering the program and hiring and training new staff).

Benefits

This authority will allow agencies to use strategic recruiting to hire post-secondary students to fill professional and administrative positions at general schedule (GS) 11 level and below. When using the authority agencies will have additional flexibility in how these students are hired. Federal agencies would determine recruitment sources and processes for the solicitation of applications and would be held responsible for merit-based selections. This authority when combined with agencies strategic recruitment plans may help agencies better recruit to fill mission critical occupations.

This flexibility is critical to agencies' ability to continue to meet current and future mission needs. Intern programs allow agencies to hire students, while in school, and provide them with on-the-job training to prepare them for a career in the Federal Government. It also introduces students to the wide range of occupations and employment opportunities that the Federal Government employs and offers. In FY 2020, the Federal Government hired fewer than 5,925 students Governmentwide (a small portion of the number of interns hired under other authorities). The low number of intern hires is insufficient to build the pipeline needed to sustain the Federal Workforce.

Executive Order 12866

Executive Order 12866 directs 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). In accordance with the provisions of Executive Order 12866, this rule was reviewed by the Office of Management and Budget as a significant, but not economically significant rule.

Regulatory Flexibility Act

The Director of the Office of Personnel Management certifies that this rule will not have a significant

economic impact on a substantial number of small entities.

Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates Reform Act of 1995

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

Congressional Review Act

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act or CRA) (5 U.S.C. 801 *et seq.*) requires rules to be submitted to Congress before taking effect. OPM will submit to Congress and the Comptroller General of the United States a report regarding the issuance of this rule before its effective date, as required by 5 U.S.C. 801. The Office of Information and Regulatory Affairs in the Office of Management and Budget has determined that this rule is not a major rule as defined by the CRA (5 U.S.C. 804). The Office of Information and Regulatory Affairs in the Office of Management and Budget has determined that this rule is not a major rule as defined by the CRA (5 U.S.C. 804).

Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521)

This final regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects in 5 CFR Parts 315, 316 and 330

Government employees.

Office of Personnel Management.

Steve Hickman,

Federal Register Liaison.

Accordingly, OPM is amending parts 315, 316, and 330 of title 5, Code of Federal Regulations, as follows:

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

■ 1. The authority citation for part 315 continues to read as follows:

Authority: 5 U.S.C. 1302, 2301, 2302, 3301, and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp. p. 218, unless otherwise noted; E.O. 13162, and E.O. 13839. Secs. 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652. Secs. 315.602 and 315.604 also issued under 5 U.S.C. 1104. Sec. 315.603 also issued under 5 U.S.C. 8151. Sec. 315.605 also issued under E.O. 12034, 3 CFR, 1978 Comp. p.111. Sec. 315.606 also issued under E.O. 11219, 3 CFR, 1964–1965 Comp. p. 303. Sec. 315.607 also issued under 22 U.S.C. 2506. Sec. 315.608 also issued under E.O. 12721, 3 CFR, 1990 Comp. p. 293. Sec. 315.610 also issued under 5 U.S.C. 3304(c). Sec. 315.611 also issued under 5 U.S.C. 3304(f). Sec. 315.612 also issued under E.O. 13473. Sec. 315.708 also issued under E.O.13318, 3 CFR, 2004 Comp. p. 265. Sec. 315.710 also issued under E.O. 12596, 3 CFR, 1987 Comp. p. 229. Subpart I also issued under 5 U.S.C. 3321, E.O. 12107, 3 CFR, 1978 Comp. p. 264.

Subpart B—The Career-Conditional Employment System

- 2. Amend § 315.201 by:
 - a. Removing the word “and” at the end of paragraph (b)(1)(xv);
 - b. Removing the period at the end of paragraph (b)(1)(xvi) and adding “; and” in its place; and
 - c. Adding paragraph (b)(1)(xvii).
 The addition reads as follows:

§ 315.201 Service requirement for career tenure.

* * * * *

(b) * * *

(1) * * *

(xvii) The date of a time-limited post-secondary student appointment under subpart F of this part provided the appointment is converted to career or career-conditional appointment under 5 CFR part 316, subpart I.

* * * * *

Subpart G—Conversion to Career or Career-Conditional Employment From Other Types of Employment

■ 3. Add § 315.714 to read as follows:

§ 315.714 Conversion based on service in a post-secondary student appointment under part 316, subpart I, of this chapter.

(a) *Agency authority.* An agency may convert to a career or career-conditional appointment from a time-limited

appointment pursuant to 5 CFR part 316, subpart I, without further competition.

(b) *Eligibility.* To be eligible for conversion the post-secondary student must:

- (1) Have completed the course of study leading to the baccalaureate or graduate degree (or certificate as appropriate);
- (2) Have completed not less than 640 hours of current continuous employment in an appointment under § 316.902 of this chapter;
- (3) Meet the OPM qualification standards for the position to which the student will be converted; and
- (4) Meet the time-in-grade requirements in accordance with 5 CFR part 300, subpart F.

(c) *Tenure on conversion.* An employee whose employment to career or career-conditional employment under this section becomes:

- (1) A career-conditional employee except as provided in paragraph (c)(2) of this section; or
- (2) A career employee when he or she has completed the service requirement for career tenure or is excepted from it by § 315.201(c).

(d) *Acquisition of competitive status.* A post-secondary student converted from time limited employment under this section acquires competitive status upon completion of probation.

PART 316—TEMPORARY AND TERM EMPLOYMENT

■ 4. Revise the authority citation for part 316 to read as follows:

Authority: 5 U.S.C. 3116, 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

■ 5. Add subpart I, consisting of §§ 316.901 through 316.915, to read as follows:

Subpart I—Hiring Authority for Post-Secondary Students

Sec.	
316.901	Appointment authority.
316.902	Eligibility.
316.903	Qualifications.
316.904	Classification.
316.905	Public notification.
316.906	Acquisition of competitive status.
316.907	Tenure upon appointment.
316.908	Breaks in program.
316.909	Promotion.
316.910	Conversion.
316.911	Reduction in force.
316.912	Termination.
316.913	Numerical limit on the number of appointments.
316.914	Reporting requirement.
316.915	Special provisions for Department of Defense.

§ 316.901 Appointment authority.

In accordance with the provisions of this section, an agency may make a time-limited appointment of an eligible and qualified post-secondary student, to any position in the competitive service, at the General Schedule (GS) 11 level or below (or equivalent), without regard to the provisions of 5 U.S.C. 3309 through 3319 and 3330. An agency may appoint an individual for an initial period not to exceed 1 year, or for an initial period expected to last more than 1 year but less than 4 years, in accordance with §§ 316.401(c)(1) and 316.301(a) and (b), respectively, to coincide with the individual's academic curriculum. In either case an agency may extend or seek extension from OPM, as appropriate in accordance with this part, of an initial appointment for a period that will allow the post-secondary student to complete his or her academic requirements leading to the awarding of a degree or certificate, as appropriate.

§ 316.902 Eligibility.

A post-secondary student means an individual who:

- (a) Is enrolled or accepted for enrollment in an institution of higher education as defined by the Higher Education Act of 1965, in a section codified at 20 U.S.C. 1001(a); and
- (b) Is pursuing a baccalaureate or graduate degree on at least a part-time basis, as determined by the institution of higher education; and
- (c) Meets the minimum qualification standards prescribed or approved by OPM for the position to which the individual is being appointed.

§ 316.903 Qualifications.

Agencies must evaluate eligible post-secondary students using the government-wide OPM prescribed minimum qualification standard or an OPM-approved agency-specific qualification standard for the position being filled.

§ 316.904 Classification.

Post-secondary student positions under the General Schedule or appropriate pay plan must be classified to the –99 series of the appropriate occupational group. Federal Wage System positions filled under the authority in this subpart must be classified to the –01 series of the appropriate occupational group. Agencies may refer to OPM's, "Introduction to the Position Classification Standards" at <https://www.opm.gov/policy-data-oversight/classification-qualifications/classifying-general-schedule-positions/>

[positionclassificationintro.pdf](#) for a definition of these positions. In addition, agencies can refer to the "Handbook of Occupational Groups and Families" available at <https://www.opm.gov/policy-data-oversight/classification-qualifications/classifying-general-schedule-positions/occupationalhandbook.pdf>.

§ 316.905 Public notification.

An agency must adhere to merit system principles and thus must provide public notification in a manner that recruits qualified individuals from appropriate sources in an endeavor to draw from all segments of society, before filling a position under the authority in this subpart. An agency may, but is not required to, use USAJOBS for this purpose. If the agency does not use USAJOBS to meet the requirements in this section, it must, at a minimum, publicly display information about the position to be filled on its public facing home page. An agency may, alternatively, provide an actual job announcement on its public facing home page or provide a link to the job announcement on its public facing home page. The agency should consider whether additional recruitment and advertisement activities are necessary or appropriate to further merit system principles. A job announcement must include, at a minimum, the following information:

- (a) The position title, series, grade level;
- (b) The geographic location where the position will be filled;
- (c) The starting salary of the position;
- (d) The minimum qualifications of the position;
- (e) Whether the individual in the position will be eligible for promotion to higher grade levels;
- (f) The time-limit applicable to the position, and in the case of a term appointment the vacancy announcement must state that the agency has the option of extending the term appointment up to the 4-year limit (if applicable);
- (g) The potential for conversion to the agency's permanent workforce;
- (h) Any other relevant information about the position such as telework opportunities, recruitment incentives, etc.; and
- (i) Specific information instructing applicants on how to apply for the position.

§ 316.906 Acquisition of competitive status.

Time spent on a time-limited appointment under this part may count toward fulfillment of a probation period

in accordance with § 315.802(b) of this chapter. A student appointed under § 316.901 acquires competitive status only upon completion of probationary period after any conversion, in accordance with the provisions of 5 CFR part 315, subpart H.

§ 316.907 Tenure upon appointment.

An individual appointed under § 316.901 becomes a career-conditional employee upon completion of academic requirements and noncompetitive conversion to a permanent appointment in accordance with § 316.910, unless the individual has already satisfied the requirements for career tenure or is exempt from the service requirement pursuant to § 315.201 of this chapter.

§ 316.908 Breaks in program.

A break in program is defined as a period of time when a student is working for the agency but is unable to go to school, or is neither attending classes nor working for the agency. An agency may use its discretion in either approving or denying a request for a break in program.

§ 316.909 Promotion.

An agency may promote a student appointed for an initial period expected to last more than 1 year but less than 4 years provided the student meets the qualification requirements for the higher graded position, time in grade requirements in 5 CFR part 300, subpart F, and the public notification for the position filled by the student stated the potential for promotion and specified a career ladder.

§ 316.910 Conversion.

An agency may convert a student serving in an appointment under the authority in this subpart, prior to the expiration date of the appointment, to a permanent position in the competitive service within the agency without further competition if the student:

(a) Has completed the course of study leading to the baccalaureate or graduate degree (or certificate as appropriate);

(b) Has completed not less than 640 hours of current continuous employment in an appointment under § 316.902;

(c) Meets the OPM qualification standards for the position to which the student will be converted; and

(d) Meets the time-in-grade requirements in accordance with 5 CFR part 300, subpart F.

§ 316.911 Reduction in force.

(a) *Reduction in force.* Post-secondary students are covered by part 351 of this chapter for purposes of reduction in force (RIF).

(1) Students whose initial appointment was for a period of 1 year or less are not assigned a tenure group and do not compete with other employees in a RIF.

(2) Students whose initial appointment was for a period expected to last more than 1 year are placed in Tenure Group III for purposes of part 351 of this chapter.

(b) [Reserved]

§ 316.912 Termination.

(a) Any appointment made under the authority in this subpart expires on the not-to-exceed date of that appointment unless the agency extends the appointment prior to expiration.

(b) An agency must terminate any student without regard to any provision of 5 U.S.C. chapter 35 or 75, who:

(1) Does not maintain eligibility in accordance with §§ 316.902 and 316.910; or

(2) Is not converted in accordance with § 316.910.

§ 316.913 Numerical limit on the number of appointments.

(a) Except as provided in paragraph (b) of this section, the total number of students that an agency may appoint under this section during a fiscal year may not exceed the number equal to 15 percent of the number of students the agency head appointed during the previous fiscal year to a position at the GS–11 level or below (or equivalent). An appointing agency may not count appointments made using direct hire authorities, non-competitive authorities, excepted service authorities other than Pathways Internship Program appointments under § 213.3402(a) of this chapter and 5 CFR part 362, subpart B, or selections under merit promotion authorities, when establishing the limit for a given fiscal year.

(b) OPM may establish a lower limitation on the number of students that may be appointed by an agency under paragraph (a) of this section during a fiscal year based on any factor OPM considers appropriate. OPM shall notify agencies via the OPM website and other venues (such as the Chief Human Capital Officer's Council) of any changes to the numerical limitation, applicable governmentwide. Changes to the numerical limit for an individual agency will be communicated directly to the agency.

§ 316.914 Reporting requirement.

(a) Not later than September 30 of each of the first three (3) fiscal years beginning after August 13, 2018, when 5 U.S.C. 3116 was enacted, an agency that makes an appointment under this

subpart must submit a report to Congress and OPM on the impact of its use of the authority in this subpart during the fiscal year in which the report is submitted. OPM will provide written guidance describing the means by which agencies should collect this information, the timing of such collections, and the groups as to which information should be collected. The report must contain the following information:

(1) The total number of individuals appointed by the agency under the authority in this subpart by position title, series, grade, and geographic location of the position, and type of appointment;

(2) The number of individuals appointed under the authority in this subpart by the items identified in 5 U.S.C. 3116(h), and in OPM guidance;

(3) The number of veterans appointed, as defined in 5 U.S.C. 2108;

(4) Any numerical limitation established by the agency in accordance with § 316.913;

(5) The recruitment sources and methods used by the agency to fill positions;

(6) The total number of individuals appointed by the agency during the applicable fiscal year to a position in the competitive service classified in a professional or administrative occupational category at the GS–11 level or below (or equivalent);

(7) The number of individuals appointed under the authority that have been separated;

(8) Information on difficulties encountered when using the authority; and

(9) The number of employees converted to permanent positions under the authority in this subpart.

(b) OPM may request additional information from agencies on their use of the authority in this subpart. An agency must include in its report to Congress and OPM any additional information required by OPM under this section.

§ 316.915 Special provisions for Department of Defense.

This subpart does not preclude the Secretary of Defense from exercising authority to appoint a post-secondary student under Public Law 114–328, Section 1106. Additionally, this subpart does not apply to the Department of Defense during the period that Public Law 114–328, Section 1106, is effective.

PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

- 6. Revise the authority citation for part 330 to read as follows:

Authority: 5 U.S.C. 1104, 1302, 3116, 3316, 3301, 3302, 3304, and 3330; E.O. 10577, 19 FR 7521, 3 CFR, 1954–58 Comp., p. 218; Section 330.103 also issued under 5 U.S.C. 3327; Section 330.104 also issued under sec. 2(d), Pub. L. 114–137, 130 Stat. 310; Subpart B also issued under 5 U.S.C. 3315 and 8151; Section 330.401 also issued under 5 U.S.C. 3310; Subparts F and G also issued under Presidential Memorandum on Career Transition Assistance for Federal Employees, September 12, 1995; Subpart G also issued under 5 U.S.C. 8337(h) and 8456(b); Section 330.707 also issued under 5 U.S.C. 3115 and 3116.

Subpart F—Agency Career Transition Assistance Plan (CTAP) for Local Surplus and Displaced Employees

- 7. Amend § 330.609 by:
- a. Removing the word “and” at the end of paragraph (e)(2);
 - b. Adding the word “and” at the end of paragraph (e)(3);
 - c. Adding paragraph (e)(4);
 - d. Removing the word “or” at the end of paragraph (cc);
 - e. Removing the period at the end of paragraph (dd) and adding a semicolon in its place;
 - f. Removing the period at the end of paragraph (ee) and adding “; or” in its place; and
 - g. Adding reserve paragraph (ff) and paragraph (gg).

The additions read as follows:

§ 330.609 Exceptions to CTAP selection priority.

* * * * *

(e) * * *
(4) A post-secondary student appointment under 5 U.S.C. 3116 and part 316, subpart I, of this chapter;

* * * * *

(gg) Make an appointment using the post-secondary student hiring authority under 5 U.S.C. 3116 and part 316, subpart I, of this chapter.

Subpart G—Interagency Career Transition Assistance Plan (ICTAP) for Displaced Employees

- 8. Amend § 330.707 by:
- a. Removing the word “and” at the end of paragraph (h)(2);
 - b. Adding the word “and” at the end of paragraph (h)(3);
 - c. Adding paragraph (h)(4);
 - d. Removing the word “or” at the end of paragraph (u);
 - e. Removing the period at the end of paragraph (v) and adding “; or” in its place; and

- f. Adding reserve paragraphs (w) and (x) and paragraph (y).

The additions read as follows:

§ 330.707 Exceptions to ICTAP selection priority.

* * * * *

(h) * * *
(4) A post-secondary student appointment under 5 U.S.C. 3116 and part 316, subpart I, of this chapter;

* * * * *

(y) Make an appointment using the post-secondary student hiring authority under 5 U.S.C. 3116 and part 316, subpart I, of this chapter.

[FR Doc. 2021–17638 Filed 8–17–21; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0618; Project Identifier 2019–CE–005–AD; Amendment 39–21676; AD 2021–16–14]

RIN 2120–AA64

Airworthiness Directives; BALÓNY KUBÍČEK spol. s r.o. Balloons

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain BALÓNY KUBÍČEK spol. s r.o. Models BB78Z, BB85Z, BB92Z, and BB130P balloons. This AD was prompted by mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as failure of the envelope vertical load tape. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 7, 2021.

The FAA must receive comments on this AD by October 4, 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.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact BALÓNY KUBÍČEK spol. s r.o., Francouzská 8, 602 00 Brno, Czech Republic; phone: +420 545 422 620; fax: +420 545 422 621; email: info@kubicekballoons.cz; website: www.kubicekballoons.eu. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2021–0618.

Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2021–0618; 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 MCAI, any comments received, and other information. The street address for the Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT:

Mike Kiesov, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4144; fax: (816) 329–4090; email: mike.kiesov@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include “Docket No. FAA–2021–0618 and Project Identifier 2019–CE–005–AD” at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to <https://www.regulations.gov>, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this final rule.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Mike Kiesov, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018-0181, dated August 27, 2018 (referred to after this as "the MCAI"), to address an unsafe condition for certain serial-numbered BALÓNY KUBÍČEK spol. s r.o. Model BB78Z, BB85Z, BB92Z, and BB130P balloons. The MCAI states:

Investigation prompted by a BB hot air balloon accident revealed a failure of an envelope vertical load tape. It was determined that other balloon envelopes might be affected as well.

This condition, if not detected and corrected, could result in envelope tear, leading to an uncontrolled descent with consequent injury to balloon occupants and persons on the ground.

To address this unsafe condition, Balóny Kubíček spol. s r.o. issued the SB [Servis Bulletin No. BB/52], providing inspection instructions to detect a weaving defect on a load tape.

For the reason described above, this [EASA] AD requires a one-time inspection of all the load tapes and, depending on findings, repair of the balloon by replacing any load tape having a weaving defect.

You may examine the MCAI in the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0618.

Related Service Information

The FAA reviewed BALÓNY KUBÍČEK spol. s r.o. Servis Bulletin No.

BB/52, dated July 23, 2018. This service information includes an example of a weaving defect in the load tape and specifies acceptable materials and procedures for repairing load tapes with visible yellow thread.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information referenced above. The FAA is issuing this AD because it has determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

AD Requirements

This AD requires inspecting the envelope load tape and repairing any envelope load tape having a weaving defect.

Justification for Immediate Adoption and Determination of the Effective Date

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

The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because there are no balloons currently on the U.S. registry and thus, it is unlikely that the FAA will receive any adverse comments or useful information about this AD from U.S. operators. Accordingly, notice and opportunity for prior public comment are unnecessary pursuant to 5 U.S.C. 553(b)(3)(B). In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days for the same reasons the FAA found good cause to forego notice and comment.

Costs of Compliance

There are currently no affected products on the U.S. registry. In the

event an affected balloon becomes a U.S.-registered balloon, the following is an estimate of the costs to comply with this AD.

The FAA estimates that it would take 1 work-hour per balloon to comply with the inspection required by this AD. The average labor rate is \$85 per work-hour. Based on these figures, the FAA estimates the cost of this AD to be \$85 per balloon.

In addition, the FAA estimates that repairing the envelope load tape, if necessary, would take 10 work-hours and require parts costing \$200 for a cost of \$1,050 per balloon.

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 Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because FAA has determined that it has good cause to adopt this rule without prior notice and comment, RFA analysis is not required.

Regulatory Findings

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

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

(1) Is not a "significant regulatory action" under Executive Order 12866, and

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–16–14 BALÓNY KUBÍČEK spol. s r.o.:
Amendment 39–21676; Docket No. FAA–2021–0618; Project Identifier 2019–CE–005–AD.

(a) Effective Date

This airworthiness directive (AD) is effective September 7, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the following BALÓNY KUBÍČEK spol. s r.o. balloons, certificated in any category:

- (1) Model BB78Z, serial numbers (S/Ns) 1292 and 1364;
- (2) Model BB85Z, S/N 1360;
- (3) Model BB92Z, S/N 1331; and
- (4) Model BB130P, S/N 1397.

(d) Subject

Joint Aircraft System Component (JASC) Code 5300, Fuselage.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as failure of the envelope vertical load tape. The FAA is issuing this AD to detect and correct defects in the envelope vertical load tape, which could result in an envelope tear and consequent uncontrolled descent.

(f) Compliance

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

(g) Inspection and Repair

Within 30 days after the effective date of this AD, inspect the envelope load tape for weaving defects indicated by visible yellow thread. If there is visible yellow thread in any envelope load tape, before further flight, repair any damaged area of the envelope load tape.

Note 1 to paragraph (g): BALÓNY KUBÍČEK spol. s r.o. Servis Bulletin No. BB/52, dated July 23, 2018, includes an example of a weaving defect and specifies acceptable procedures and materials for repairing envelope load tape.

(h) Alternative Methods of Compliance (AMOCs)

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

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

(i) Related Information

(1) For more information about this AD, contact Mike Kiesov, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4144; fax: (816) 329–4090; email: mike.kiesov@faa.gov.

(2) Refer to European Aviation Safety Agency (EASA) AD 2018–0181, dated August 27, 2018, for more information. You may examine the EASA AD in the AD docket at <https://www.regulations.gov> by searching for and locating it in Docket No.

(j) Material Incorporated by Reference

None.

Issued on August 5, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–17604 Filed 8–17–21; 8:45 am]

BILLING CODE 4910–13–P

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

[Docket No. FAA–2021–0447; Project Identifier AD–2021–00131–E; Amendment 39–21692; AD 2021–17–09]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Pratt & Whitney PW1500G and PW1900G

series turbofan engines. This AD was prompted by reports of cracks in the high-pressure compressor (HPC) rotor shaft that resulted in in-flight shutdowns (IFSDs) and unscheduled engine removals (UERs). This AD requires removal and replacement of the HPC front hub and HPC rotor shaft. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 22, 2021.

ADDRESSES: For service information identified in this final rule, contact Pratt & Whitney, 400 Main Street, East Hartford, CT 06118; phone: (800) 565–0140; email: help24@pw.utc.com; website: <https://fleetcare.prattwhitney.com/>. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238–7759. It is also available at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2021–0447.

Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2021–0447; 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:

Mark Taylor, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7229; fax: (781) 238–7199; email: Mark.Taylor@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 PW1519G, PW1521G, PW1521G–3, PW1521GA, PW1524G, PW1524G–3, PW1525G, PW1525G–3, PW1919G, PW1921G, PW1922G, PW1923G, and PW1923G–A model turbofan engines. The NPRM published in the **Federal Register** on June 3, 2021 (86 FR 29707). The NPRM was prompted by reports of cracks in the HPC rotor shaft that resulted in vibration and subsequent IFSDs and

UERS. The manufacturer determined that the threads on the HPC rotor shaft were not optimized for load distribution, which resulted in vibration stresses. During one occurrence, oil was released at the high-pressure turbine (HPT) disk bore location. The manufacturer redesigned the HPC front hub and HPC rotor shaft for increased durability and decreased vibration stress. The redesigned HPC front hub is made from nickel to help with corrosion resistance. The threads on the HPC rotor shaft were also redesigned to help distribute the load on the threads and decrease vibration stress. In the NPRM, the FAA proposed to require removal and replacement of the HPC front hub and HPC rotor shaft. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from one commenter, the Air Line Pilots Association, International (ALPA). ALPA supported the NPRM without change.

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. This AD is adopted as proposed in the NPRM.

Related Service Information

The FAA reviewed Pratt & Whitney Service Bulletin (SB) PW1000G-A-72-00-0154-00A-930A-D, Issue No. 001, dated May 7, 2021 (PW1000G-A-72-00-0154-00A-930A-D), and Pratt & Whitney SB PW1000G-A-72-00-0101-00B-930A-D, Issue No. 001, dated May 7, 2021 (SB PW1000G-A-72-00-0101-00B-930A-D). These SBs describe procedures for removing and replacing the HPC front hub and HPC rotor shaft.

Costs of Compliance

The FAA estimates that this AD affects 88 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace HPC front hub and HPC rotor shaft	25.75 work-hours × \$85 per hour = \$2,188.75.	\$120,090	\$122,278.75	\$10,760,530

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:
Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

2021-17-09 Pratt & Whitney: Amendment 39-21692; Docket No. FAA-2021-0447; Project Identifier AD-2021-00131-E.

(a) Effective Date

This airworthiness directive (AD) is effective September 22, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Pratt & Whitney PW1519G, PW1521G, PW1521G-3, PW1521GA, PW1524G, PW1524G-3, PW1525G, PW1525G-3, PW1919G, PW1921G, PW1922G, PW1923G, and PW1923G-A model turbofan engines.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of cracks in the high-pressure compressor (HPC) rotor shaft that resulted in in-flight shutdowns and unscheduled engine removals. The FAA is issuing this AD to prevent cracking of the HPC rotor shaft. The unsafe condition, if not addressed, could result in release of a high-pressure turbine disk, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Action

At the next engine shop visit after the effective date of this AD, remove HPC front hub, part number (P/N) 30G1910 or 30G3210, and HPC rotor shaft, P/N 30G1854, 30G3109, 30G4995, 30G4953, or 31G0014, from service and replace each part with a part eligible for installation.

(h) Definitions

(1) For the purpose of this AD, an “engine shop visit” is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine case flanges, except for the following, which do not constitute an engine shop visit:

(i) Separation of engine flanges solely for the purposes of transportation without subsequent maintenance does not constitute an engine shop visit.

(ii) Separation of engine flanges solely for the purpose of replacing the fan without subsequent maintenance does not constitute an engine shop visit.

(2) For the purpose of this AD, a “part eligible for installation” is:

(i) For an HPC front hub: any HPC front hub with a P/N other than P/N 30G1910 or 30G3210; and

(ii) For an HPC rotor shaft: any HPC rotor shaft with a P/N other than P/N 30G1854, 30G3109, 30G4995, 30G4953, or 31G0014.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

For more information about this AD, contact Mark Taylor, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238-7229; fax: (781) 238-7199; email: Mark.Taylor@faa.gov.

(k) Material Incorporated by Reference

None.

Issued on August 12, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021-17654 Filed 8-17-21; 8:45 am]

BILLING CODE 4910-13-P

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

[Docket No. FAA-2021-0364; Project Identifier MCAI-2020-00274-R; Amendment 39-21675; AD 2021-16-13]

RIN 2120-AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Leonardo S.p.a. (Leonardo) Model A109S and AW109SP helicopters with a certain part-numbered vertical fin vibration absorber installation installed. This AD requires repetitive inspections of the vertical fin vibration absorber installation and the surrounding structure and depending on the inspection results, removing certain parts from service. This AD also prohibits installing certain part-numbered vertical fin vibration absorber installations on any helicopter. This AD was prompted by a report of cracks and damage detected on the vertical fin absorber installation and surrounding structure during scheduled inspections. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 22, 2021.

ADDRESSES: For service information identified in this final rule, contact Leonardo S.p.a. Helicopters, Emanuele Bufano, Head of Airworthiness, Viale G.Agusta 520, 21017 C. Costa di Samarate (Va) Italy; telephone +39-0331-225074; fax +39-0331-229046; or at <https://www.leonardocompany.com/en/home>. You may view the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177.

Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0364; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the European Union Aviation Safety Agency (EASA) AD, any comments received, and other information. The street address for Docket Operations is U.S. Department of Transportation, Docket Operations,

M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Kristin Bradley, Aerospace Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222-5110; email kristin.bradley@faa.gov.

SUPPLEMENTARY INFORMATION:**Background**

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Leonardo Model A109S and AW109SP helicopters with a vertical fin vibration absorber installation part number (P/N) 109-B810-79-101 installed. The NPRM published in the **Federal Register** on May 13, 2021 (86 FR 26198). In the NPRM, the FAA proposed, within 30 hours time-in-service (TIS), and thereafter at intervals not to exceed 100 hours TIS, removing the vertical fin vibration absorber installation and, using a mirror and light source, inspecting the rib assembly and depending on the inspection results, removing certain parts from service. The NPRM also proposed to require inspecting the vertical fin vibration absorber installation for hole elongation; for fretting between the plate and the masses, and in between the masses; for fretting on the doubler; and the bolts for scratches and corrosion. Depending on the inspection results, the NPRM proposed removing the vertical fin vibration absorber installation from service. The NPRM also proposed to require, within 12 months TIS, removing the vertical fin vibration absorber installation from service. Finally, the NPRM proposed to prohibit installing an affected part on any helicopter, and provided a terminating action for the 100-hour TIS repetitive inspections.

The NPRM was prompted by EASA AD 2014-0150, dated June 18, 2014 (EASA AD 2014-0150), issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for certain AgustaWestland S.p.A. (now Leonardo S.p.a. Helicopters) (formerly Agusta S.p.A.) Model A109S and AW109SP helicopters with an absorber P/N 109-B810-79-101 installed. EASA advises that during a scheduled inspection on Model A109S and AW109SP helicopters, cracks and damage were detected on the vertical fin vibration absorber installation and the surrounding structure. EASA stated that investigation results determined the

cracks and damage were likely related to the design of the vertical fin vibration absorber installation and incorrect installation. Accordingly, EASA AD 2014–0150 required repetitive inspections and removal of the affected part.

After EASA AD 2014–0150 was issued, EASA determined certain helicopters were not included in the applicability and may also be subject to the unsafe condition. Accordingly, EASA issued EASA AD 2019–0294, dated December 4, 2019 (EASA AD 2019–0294), which supersedes EASA AD 2014–0150. EASA AD 2019–0294 retains the requirements of EASA AD 2014–0150 and expands the applicability, prohibits vertical fin vibration absorber installation P/N 109–B810–79–101 from being installed on any helicopter, and considers removal of the affected part to constitute terminating action for the repetitive inspections. EASA states that the unsafe condition, if not detected and corrected, could affect the structural integrity of the helicopter.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

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 reviewed the relevant data and determined that air safety requires adopting this AD as proposed except for a correction to the compliance time for removing the vertical fin vibration absorber installation from service. The NPRM stated that removing this part from service would be required "within 12 months TIS"; the term "TIS" was included in error and has been removed. This change does not increase the economic burden on any operator. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters.

Related Service Information

The FAA reviewed AgustaWestland S.p.A. Bollettino Technico No. 109S–58 for Model A109S helicopters, and AgustaWestland S.p.A. Bollettino Technico No. 109SP–074 for Model AW109SP helicopters, each dated May 7, 2014. This service information specifies instructions for removing the

vertical fin vibration absorber installation, inspecting the rib assembly and vertical fin vibration absorber installation and depending on the inspection results, removing certain parts from service.

Differences Between This AD and the EASA AD

EASA AD 2019–0294 applies to certain serial-numbered Model A109S and AW109SP helicopters, whereas this AD applies to all serial-numbered Model A109S and AW109SP helicopters with a certain part-numbered vertical fin vibration absorber installation installed.

Costs of Compliance

The FAA estimates that this AD affects 96 helicopters of U.S. Registry and that operators may incur the following costs in order to comply with this AD. Labor costs are estimated at \$85 per work-hour.

Removing and inspecting the vertical fin vibration absorber installation and surrounding structure takes about 8 work-hours for an estimated cost of \$680 per helicopter per inspection cycle and \$65,280 for the U.S. fleet per inspection cycle.

Replacing the rib assembly, shim, doubler, and bracket will take about 16 work-hours and parts will cost about \$10,000 for an estimated cost of \$11,360 per helicopter.

According to Leonardo some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage by Leonardo. Accordingly, all costs are included in this 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 helicopters identified in this rulemaking action.

Regulatory Findings

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–16–13 Leonardo S.p.a.: Amendment 39–21675; Docket No. FAA–2021–0364; Project Identifier MCAI–2020–00274–R.

(a) Effective Date

This airworthiness directive (AD) is effective September 22, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Leonardo S.p.a. Model A109S helicopters and AW109SP helicopters, certificated in any category, with vertical fin vibration absorber installation part number (P/N) 109–B810–79–101 installed.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 2740, Stabilizer Control System.

(e) Unsafe Condition

This AD defines the unsafe condition as cracks or damage on the vertical fin vibration absorber installation and surrounding structure. This condition could affect the

structural integrity of the helicopter and lead to subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

(1) Within 30 hours time-in-service (TIS) after the effective date of this AD, and thereafter at intervals not to exceed 100 hours TIS:

(i) Remove the vertical fin vibration absorber installation P/N 109-B810-79-101, and using a mirror and light source, visually inspect the rib assembly P/N 109-0372-53-201 for hole elongation, fretting, and cracks. If there is any hole elongation, fretting, or cracks, before further flight, remove rib assembly P/N 109-0372-53-201, shim P/N 109-0372-53-211, doubler P/N 109-0372-53-213, and bracket P/N 109-0373-02-113 from service and replace with airworthy parts.

(ii) Inspect the vertical fin vibration absorber installation P/N 109-B810-79-101 for hole elongation; for fretting between the plate and the masses and in-between the masses; for fretting on doubler P/N 109-0372-53-213; and the bolts for scratches and corrosion. If there is any hole elongation; fretting between the plate and the masses or in-between the masses; fretting on doubler P/N 109-0372-53-213; or bolts with scratches or corrosion, before further flight, remove the vertical fin vibration absorber installation P/N 109-B810-79-101 from service.

(2) Within 12 months after the effective date of this AD unless already accomplished per paragraph (g)(1)(ii) of this AD, remove the vertical fin vibration absorber installation P/N 109-B810-79-101 from service.

(3) As of the effective date of this AD, do not install vertical fin vibration absorber installation P/N 109-B810-79-101 on any helicopter.

(4) Removing the vertical fin vibration absorber installation P/N 109-B810-79-101 from service, as described in paragraphs (g)(1)(ii) or (2) of this AD provides a terminating action for the 100 hour TIS repetitive inspections required by paragraph (g)(1) of this AD.

(h) Alternative Methods of Compliance (AMOCs)

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

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

(i) Related Information

(1) For more information about this AD, contact Kristin Bradley, Aerospace Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222-5110; email kristin.bradley@faa.gov.

(2) The subject of this AD is addressed in European Union Aviation Safety Agency (EASA) AD 2019-0294, dated December 4, 2019. You may view the EASA AD on the internet at <https://www.regulations.gov> in Docket No. FAA-2021-0364.

Issued on July 29, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021-17605 Filed 8-17-21; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2021-0639]

RIN 1625-AA08

Special Local Regulation; Low Country Splash Open Water Swim, Charleston, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation on the waters of the Wando River, Cooper River, and Charleston Harbor in Charleston, SC. This action is necessary to provide for the safety of life on navigable waters during the Low Country Splash Open Water Swim. This rulemaking would restrict persons and vessels from entering certain waters of the Wando River, Cooper River, and Charleston Harbor, unless authorized by Sector Charleston Captain of the Port or a designated representative.

DATES: This rule is effective from 7 a.m. until 11 a.m., on September 18, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0639 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Chad Ray, Sector Charleston Waterways Management Division, Coast Guard; telephone (843) 740-3184, email Chad.L.Ray@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 (NPRM) with respect to this rule because it is impracticable. The Coast Guard has published a special local regulation for this event in 33 CFR 100.704, Table 1 to § 100.704, Line No. 4; however, the existing special location regulation is dated for the first week of May while this year's event is scheduled for September 18, 2021.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because the potential safety hazards associated with the Low Country Splash Open Water Swim taking place on September 18, 2021.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Captain of the Port Charleston (COTP) has determined that potential hazards associated with the Low Country Splash Open Water Swim event presents a safety concern for anyone in the vicinity of the regulated area during the event. This rule is needed to protect participants, spectators, and the general public in the navigable waters within the regulated area during the Low Country Splash Open Water Swim event.

IV. Discussion of the Rule

This rule establishes a special local regulation from 7 a.m. until 11 a.m., on September 18, 2021. The special local regulation will cover all navigable waters within a moving zone, beginning at Daniel Island Pier, south along the

coast of Daniel Island, across the Wando River to Hobcaw Yacht Club, south along the coast of Mt. Pleasant, S.C., to Charleston Harbor Resort Marina. The duration of the special local regulation is intended to ensure the safety of participants, spectators, vessels and these navigable waters before, during, and after the scheduled event. No vessel or person will be permitted to enter the regulated area without obtaining permission from Sector Charleston COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on: (1) Non-participant persons and vessels may enter, transit through, anchor in, or remain within the regulated area during the enforcement periods if authorized by Sector Charleston COTP or a designated representative; (2) vessels not able to enter, transit through, anchor in, or remain within the regulated area without authorization from Sector Charleston COTP or a designated representative may operate in the surrounding areas during the enforcement period; (3) the Coast Guard will provide advance notification of the special local regulation to the local maritime community by Broadcast Notice to Mariners; (4) the regulated area will impact small designated areas of Wando River, Cooper River, and Charleston Harbor for only 4 hours and thus is limited in time and scope.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and

operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination

with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule a special local regulation lasting 4 hours. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

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 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. Add § 100.T07–0084 to read as follows:

§ 100.T07–0084 Special Local Regulation; Low Country Splash Open Water Swim, Wando River, Cooper River, and Charleston Harbor, Charleston, SC.

(a) *Location.* All waters within a moving zone, beginning at Daniel Island Pier in approximate position 32°51'20" N, 079°54'06" W, south along the coast of Daniel Island, across the Wando River to Hobcaw Yacht Club, in approximate position 32°49'20" N, 079°53'49" W, south along the coast of Mt. Pleasant, S.C., to Charleston Harbor Resort Marina, in approximate position 32°47'20" N, 079°54'39" W.

(b) *Definition.* The term “designated representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Sector Charleston COTP in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Sector Charleston COTP or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Sector Charleston COTP by telephone at 843–740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Sector Charleston COTP or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Sector Charleston COTP or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement period.* This section will be enforced from 7 a.m. until 11 a.m., on September 18, 2021.

Dated: August 11, 2021.

J.D. Cole,

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

[FR Doc. 2021–17711 Filed 8–17–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0644]

RIN 1625–AA00

Safety Zone; Lower Mississippi River, Waxhaw, MS; MM 593–597

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Lower Mississippi River (LMR), between Mile Marker 593 and 597. The safety zone is needed to protect persons, property, and the marine environment from the potential safety hazards associated with dredging operations in the vicinity of Waxhaw, MS. Entry of persons or vessels into this zone is prohibited unless authorized by the Captain of the Port Sector Lower Mississippi River or a designated representative.

DATES: This rule is effective without actual notice from August 18, 2021 through September 15, 2021. For the purposes of enforcement, actual notice will be used from August 13, 2021 until August 18, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2021–0644 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MSTC Lindsey Swindle, U.S. Coast Guard; telephone 901–521–4813, email Lindsey.M.Swindle@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. Immediate action is needed to protect persons and property from the potential safety hazards associated with dredging operations. The NPRM process would delay the establishment of the safety zone until after the date of the event and compromise public safety. We must establish this temporary safety zone immediately and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with dredging operations in the vicinity of Waxhaw, MS starting August 13, 2021.

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) Sector Lower Mississippi River (LMR) has determined that potential hazards associated with dredging operations between Mile Marker (MM) 593 and 597, scheduled to start on August 13, 2021, would be a safety concern for all persons and vessels on the Lower Mississippi River between MM 593 and MM 597 through September 15, 2021. This rule is needed to protect persons, property, infrastructure, and the marine environment in all waters of the LMR within the safety zone while dredging operations are being conducted.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from August 13, 2021 through September 15, 2021. The safety zone will cover all navigable waters of

the LMR from MM 593 to MM 597. The duration of this safety zone is intended to ensure the safety of waterway users on these navigable waters during dredging operations.

Entry of persons or vessels into this safety zone is prohibited unless authorized by the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Lower Mississippi River. Persons or vessels seeking to enter the safety zones must request permission from the COTP or a designated representative on VHF-FM channel 16 or by telephone at 314-269-2332. If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative. The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNM)s, and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

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. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. 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, and duration of the safety zone. This safety zone will temporarily restrict navigation on the LMR from MM 593 through MM 597, from August 13, 2021 through September 15, 2021. Moreover, The Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the safety zone, and the rule allows 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 temporary 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 (Public Law 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of

power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will prohibit entry on a one-mile stretch of the Lower Mississippi River. It is categorically excluded from further review under paragraph L60 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protestors. 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.T08–0644 to read as follows:

§ 165.T08–0644 Safety Zone; Lower Mississippi River, Waxhaw, MS; MM 593–597.

(a) *Location.* The following area is a safety zone: All navigable waters of the Lower Mississippi River from Mile Marker (MM) 593 through MM 597.

(b) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the Captain of the Port Sector Lower Mississippi River (COTP) or the COTP's designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Lower Mississippi River.

(2) To seek permission to enter, contact the COTP or the COTP's representative via VHF–FM channel 16 or by telephone at 314–269–2332. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(c) *Enforcement period.* This section will be enforced from August 13, 2021, through September 15, 2021.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts, as appropriate.

Dated: August 13, 2021.

R.S. Rhodes,

Captain, U.S. Coast Guard, Captain of the Port Sector Lower Mississippi River.

[FR Doc. 2021–17632 Filed 8–17–21; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS**Copyright Office****37 CFR Parts 201, 203 and 221**

[Docket No. 2021–2]

Copyright Alternative in Small-Claims Enforcement (“CASE”) Act Regulations: Expedited Registration and FOIA

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The U.S. Copyright Office is amending its regulations to establish a new expedited registration option under the Copyright Alternative in Small-Claims Enforcement Act of 2020 and to provide a technical update to the Office's Freedom of Information Act regulations. To qualify for this expedited registration option, the work(s) being registered must be the subject of a claim or counterclaim before the Copyright Claims Board.

DATES: Effective September 17, 2021.

FOR FURTHER INFORMATION CONTACT:

Kevin R. Amer, Acting General Counsel and Associate Register of Copyrights, by email at kamer@copyright.gov; John R. Riley, Assistant General Counsel, by email at jril@copyright.gov, or Brad A. Greenberg, Assistant General Counsel, by email at brgr@copyright.gov. Each can be contacted by telephone at (202) 707–8350.

SUPPLEMENTARY INFORMATION:**I. Background****A. Statutory Framework**

On December 27, 2020, the President signed into law the Copyright Alternative in Small-Claims Enforcement (“CASE”) Act of 2020.¹ The CASE Act establishes the Copyright Claims Board (“CCB” or “Board”), a voluntary, alternative forum to federal court for parties to seek resolution of copyright disputes that have a low economic value (“small copyright claims”).² The creation of the CCB does

¹ Public Law 116–260, sec. 212, 134 Stat. 1182, 2176 (2020).

² See, e.g., H.R. Rep. No. 116–252, at 18–20 (2019); S. Rep. No. 116–105, at 7–8 (2019). Note, the CASE Act legislative history cited is for H.R. 2426 and S. 1273, the CASE Act of 2019, a bill nearly identical to the CASE Act of 2020. See H.R. 2426, 116th Cong. (2019); S. 1273, 116th Cong. (2019). In developing the CASE Act, Congress drew on model legislation in the Office's 2013 policy report, *Copyright Small Claims*, <https://www.copyright.gov/docs/smallclaims/usco-smallcopyrightclaims.pdf> (“*Copyright Small Claims*”). Congress also incorporated the Office's report and supporting materials into the statute's legislative history. H.R. Rep. No. 116–252, at 19; S. Rep. No. 116–105, at 2.

not displace or limit the ability to bring small copyright claims in federal court, but rather provides a more accessible alternative forum.³ The CCB has authority to hear copyright infringement claims, claims seeking a declaration of noninfringement, and misrepresentation claims under section 512(f) of title 17.⁴ Participation before the CCB is voluntary for all parties,⁵ and all determinations are non-precedential.⁶ The Copyright Office is in the process of standing up the CCB and intends to promulgate several operational and procedural rules.⁷ Congress directed the CCB to begin operations by December 27, 2021, though the Register may, for good cause, extend that deadline by not more than 180 days.⁸

Consistent with the overall goal of providing a cost-effective, streamlined alternative to federal litigation, the CASE Act includes provisions addressing the Copyright Act's registration prerequisite to filing an infringement action. In general, the owner of the copyright in a United States work may not initiate an infringement suit until the Office has issued or refused to issue a copyright registration.⁹ Additionally, the Copyright Act provides that in most instances, for a copyright owner to qualify for an award of attorneys' fees or statutory damages, the infringed work must have been registered on or before the date the infringement commenced, unless registration is made within three months after the work's first publication.¹⁰ In considering the challenges facing those involved in

³ H.R. Rep. No. 116–252, at 17; S. Rep. No. 116–105, at 2–3, 9.

⁴ 17 U.S.C. 1504(c)(1)–(3). The CCB cannot issue injunctive relief but can require that an infringing party cease or mitigate its infringing activity in the event such party agrees and the agreement is reflected in the proceeding's record. *Id.* at 1504(e)(2)(A)(i), (e)(2)(B). This provision also applies to parties making knowing material misrepresentations under section 512(f). *Id.* at 1504(e)(2)(A)(ii).

⁵ See *id.* at 1504(a); H.R. Rep. No. 116–252, at 17, 21; S. Rep. No. 116–105, at 3, 11.

⁶ H.R. Rep. No. 116–252, at 21–22, 33; S. Rep. No. 116–105, at 14.

⁷ See 86 FR 16156 (Mar. 26, 2021).

⁸ Public Law 116–260, sec. 212(d), 134 Stat. at 2199.

⁹ 17 U.S.C. 411(a) (“[N]o civil action for infringement of the copyright in any United States work shall be instituted until preregistration or registration of the copyright claim has been made in accordance with this title” or “the deposit, application, and fee required for registration have been delivered to the Copyright Office in proper form and registration has been refused.”); *Fourth Estate Pub. Benefit Corp. v. Wall-Street.com, LLC*, 139 S. Ct. 881, 886 (2019) (holding that “registration occurs, and a copyright claimant may commence an infringement suit, when the Copyright Office registers a copyright”).

¹⁰ 17 U.S.C. 412.

small copyright claims, the Office noted that while copyright registration “helps to produce a valuable public record of American creativity as well as material information to parties in litigation,” at times it may also act as “a procedural hurdle for copyright claimants . . . who may not be aware of the repercussions of not registering in a timely manner.”¹¹ Congress similarly noted that “many small claimants currently do not register their works because they do not expect to be able to enforce their rights in federal court.”¹²

The CASE Act addresses these concerns by allowing a party to file an infringement claim with the CCB once “a completed application, a deposit, and the required fee for registration” have been delivered to the Office.¹³ The legislative history characterizes this approach as taking “a more liberal attitude towards the commencement of a proceeding while registration of a work is in progress.”¹⁴ But before the CCB renders a decision in any infringement dispute, the CASE Act mandates that the work at issue must be registered by the Office, and the other parties in the proceeding must have an opportunity to address the registration certificate.¹⁵ Recognizing that some infringement claims may involve works for which a registration application has been submitted, but for which the Office has not yet rendered a decision, the statute directs the CCB to hold such proceedings in abeyance.¹⁶ If the Office refuses the registration, the CCB action will be dismissed without prejudice.¹⁷ The CCB also may dismiss an action without prejudice if it has been held in abeyance for at least one year, upon providing thirty days written notice to the parties.¹⁸ As the legislative history explains, “[t]his process is intended to strike a balance between still encouraging timely registration of works with the promise of a higher damages caps [in federal court] with the reality that smaller creators may have numerous understandable reasons for not routinely engaging in the registration process.”¹⁹

To ensure that the work at issue in a CCB proceeding is registered in a timely manner before the CCB issues a determination, the CASE Act directs the

Office to “establish regulations allowing the Copyright Office to make a decision, on an expedited basis, to issue or deny copyright registration for an unregistered work that is at issue before the Board.”²⁰

The CASE Act also limits the materials related to a CCB proceeding that must be disclosed under the Freedom of Information Act (“FOIA”). Subject to certain conditions and exceptions, FOIA requires agencies to make their records available to the public either proactively or in response to a request.²¹ The CASE Act provides that “[a]ll information relating to proceedings of the Copyright Claims Board under this chapter is exempt from disclosure” under FOIA, except for “determinations, records, and information” that are published on the Office’s website and that relate to a CCB final determination.²²

B. Proposed Rule and Public Comment

On April 26, 2021, the Office issued a notice of proposed rulemaking (the “NPRM”) requesting public comment on proposed processes for small claims expedited registration and a conforming amendment for disclosures under FOIA.²³ The NPRM proposed to allow a claimant or counterclaimant with a pending copyright registration application to seek expedited review of that application by making such a request and paying the requisite fee, but only after he or she submitted the completed registration application and the respondent either opted in to the CCB proceeding or did not timely opt out. The proposed rule would not enable the CCB to proceed with a dispute involving a work for which registration is still pending or has been denied. Additionally, the NPRM proposed an amendment to the Office’s FOIA regulations to reflect that, as required by the CASE Act, only those CCB “determinations, records, and information” that are published on the Office’s website and that relate to a CCB final determination are subject to disclosure under FOIA.

The Office received four comments in response to the NPRM. The Office had asked stakeholders to try to submit joint comments where they had agreement, and one set of comments, submitted by

the Copyright Alliance, was joined by twenty separate stakeholder groups.²⁴ One of those organizations, the National Press Photographers Association, also submitted separate comments. Comments were also filed by the Science Fiction and Fantasy Writers of America, Inc. (“SFWA”) and by Verizon. On the whole, the comments were broadly supportive of the proposed rule and conforming amendment, while providing substantive feedback on some specific provisions. Verizon’s comments were generally critical of the creation of CCB as an institution and raised concerns about possible abusive actions by claimants.

Having carefully considered each of the comments, the Office now issues a final rule that closely follows the proposed rule, with certain modifications. First, the final rule adjusts the language pertaining to the initiation of an expedited registration request to provide that such a request may be made only after the proceeding has become active. Second, the final rule clarifies that the CCB will provide notice to all parties to a proceeding when a proceeding is dismissed without prejudice after being held in abeyance for more than one year pending a registration decision. Third, the final rule provides additional flexibility as to the methods of payment that may be accepted for small claims expedited registration. Fourth, the final rule specifies the standard governing denials of requests for small claims expedited registration. Finally, the final rule uses the word “request” rather than “claim” to refer to the action a claimant or counterclaimant takes to initiate small claims expedited registration, to remove possible confusion with other uses of the term “claim.”

In the NPRM, the Office noted that it anticipated publishing this rule as an interim rule.²⁵ Because, however, the public has had an opportunity to comment on the proposed rule, and in light of the limited number of comments received, the Office does not believe

²⁴ The groups joining the Copyright Alliance are ACT | The App Association, American Photographic Artists, American Society for Collective Rights Licensing, Inc., American Society of Media Photographers, Inc., The Authors Guild, CreativeFuture, Digital Media Licensing Association, Graphic Artists Guild, Inc., Independent Book Publishers Association, Music Artists Coalition, Music Creators North America, National Music Council of the United States, National Press Photographers Association, North American Nature Photography Association, Professional Photographers of America, The Recording Academy, Screen Actors Guild-American Federation of Television and Radio Artists, Society of Composers & Lyricists, Songwriters Guild of America, Inc., and Songwriters of North America.

²⁵ 86 FR at 21992.

¹¹ *Copyright Small Claims* at 16–17; see also H.R. Rep. No. 116–252, at 25–26.

¹² H.R. Rep. No. 116–252, at 26.

¹³ 17 U.S.C. 1505(a)(1).

¹⁴ H.R. Rep. No. 116–252, at 25.

¹⁵ 17 U.S.C. 1505(b)(1).

¹⁶ *Id.* at 1505(b)(2).

¹⁷ *Id.* at 1505(b)(3); see also *Copyright Small Claims* at 108–09.

¹⁸ 17 U.S.C. 1505(b)(2).

¹⁹ H.R. Rep. No. 116–252, at 26.

²⁰ 17 U.S.C. 1505(d).

²¹ See 5 U.S.C. 552.

²² 17 U.S.C. 1506(t)(4).

²³ 86 FR 21990 (Apr. 26, 2021). Comments received in response to the April 2021 NPRM are available at <https://www.regulations.gov/document/COLC-2021-0002-0001/comment>. References to comments responding to the April 2021 NPRM are by party name (abbreviated where appropriate), followed by “NPRM Comments.”

that additional written comments are necessary at this time.²⁶ The Office therefore is publishing the rule as final. As with other CCB regulations, the Office will carefully monitor the operation of these procedures and welcomes CCB participants' feedback as to whether further adjustments should be considered in the future.

II. Final Rule

A. Small Claims Expedited Registration

The NPRM outlined several regulatory requirements to govern the expedited registration process. Commenters were generally supportive of the regulation's proposed framework and substance. Recommended amendments to the proposed rule were limited to the matters discussed below.

1. Requesting Small Claims Expedited Registration

Under the CASE Act, a claim or counterclaim may be asserted before the CCB where "the legal or beneficial owner of the copyright has first delivered a completed application, a deposit, and the required fee for registration of the copyright to the Copyright Office," and "a registration certificate has either been issued or has not been refused."²⁷ The small claims expedited registration provision is designed to reduce the time required for examination of a party's application and, in doing so, streamline claim resolution before the CCB. The NPRM provided that small claims expedited registration may be requested only after a claimant or counterclaimant "has submitted a completed registration application and the respondent has either opted in or has not timely opted out" of the CCB proceeding. This requirement aimed to "ensure that registration applicants do not invoke the CCB to receive special handling treatment at a discounted rate when not genuinely intending to pursue their claim through the CCB."²⁸

The Copyright Alliance et al. objected to the inclusion of the phrase "opting in," noting that the statute does not contain that language and that it therefore could cause confusion.²⁹ To address that concern, the final rule amends the proposed rule, providing

²⁶ Interim final rules are a common practice among federal agencies, often adopted when there is a need to promulgate a rule before comments can be received, considered, and addressed. See 5 U.S.C. 553(b)(3)(B) (good-cause exception to notice-and-comment requirements under Administrative Procedure Act).

²⁷ 17 U.S.C. 1505(a).

²⁸ 86 FR at 21992–93.

²⁹ Copyright Alliance et al. NPRM Comments at 7.

that a claimant or counterclaimant may request small claims expedited registration only after it "has submitted a completed registration application and the proceeding has become active." The revision reflects that there are several ways for a proceeding to become active, including when a respondent fails to timely opt out or the case is referred from a district court with consent of the parties.³⁰

2. Abeyance

The proposed rule reflected the statutory requirement that if the proceeding cannot move forward because a registration certificate for the work is still pending, the CCB will hold the proceedings in abeyance until a decision is made on the application.³¹ It also provided that "[i]f the proceeding has been held in abeyance for more than one year, the Copyright Claims Board may dismiss the claim or counterclaim without prejudice after providing thirty days written notice."³² The Copyright Alliance et al. asked the Office to clarify "to whom written notice will be provided."³³ The final rule clarifies that the CCB will provide notice of the dismissal to all parties to the proceeding.

3. Fees

The NPRM provided that a fee would be required to seek small claims expedited registration.³⁴ In response, two commenters raised questions as to how the Office would handle small claims expedited registration requests for works included in a group registration application and whether the fee in such cases would be higher than for works not included in a group application.³⁵ To clarify, small claims expedited registration relates to examination of the registration application as a whole, and not to examination of the specific work or works at issue before the CCB. Because the expedited registration fee is paid per registration application, small claims expedited registration for a group application will incur the same fee as is applicable to a single-work application. Thus, there is no need to revise the

³⁰ See 17 U.S.C. 1506(j), 1509(b). The Office also removed the word "both" from before "completed an application" because only one action—completing the registration application—is taken by the claimant or counterclaimant. This change does not alter the substance of the rule.

³¹ *Id.* at 1505(b)(2).

³² 86 FR at 21993.

³³ Copyright Alliance et al. NPRM Comments at 10.

³⁴ 86 FR at 21992–94.

³⁵ See Copyright Alliance et al. NPRM Comments at 8; SFWA NPRM Comments at 2–3.

proposed rule to provide unique fees and procedures for group registrations.

To keep the CCB accessible while helping to offset some of the anticipated cost increases related to small claims expedited registration, the Office has determined that a \$50 fee is reasonable. Verizon argued that a \$50 fee would be too low and "would incentivize claimants, large or small, to pay only \$50 and file some claim at the CCB in order to gain access to a quick registration, a CCB decision, and possible statutory damages."³⁶ The Office, however, believes it is important to keep fees low wherever possible to advance the statutory goal of providing a cost-effective alternative to federal court. While the Office appreciates the concerns over potential abuses, it should be noted that the statute specifically includes provisions to deter abusive behavior and empowers the Office to promulgate various regulations to safeguard the CCB, parties, and the public from such practices.³⁷ The Office believes that such concerns are more properly addressed through the regulatory process than through its fee-setting authority. The final rule thus does not revise the proposed fee and establishes that applicants seeking small claims expedited registration will pay a \$50 fee for each request. This fee is in addition to the relevant copyright registration application fee. In line with its overall approach to fee-setting, the Office intends to periodically reassess the reasonableness of the small claims expedited registration fee once additional data about the operation of this service becomes available.

4. Methods of Payment

Separately, the Copyright Alliance et al. proposed expanding the permitted methods of payment available for small claims expedited registration. The proposed rule specified that "[t]he fee for small claims expedited registration must be submitted electronically to the Copyright Claims Board and not through the Copyright Office's electronic registration system," and shall be paid, in accordance with Office instructions posted online, by "credit or debit cards, or directly from [parties'] bank accounts by means of automated clearing house (ACH) debit transactions."³⁸ The Copyright Alliance et al. recommended providing greater flexibility by allowing payment using "prepaid cards and other widely accepted online payment options, like PayPal, Zelle, Venmo, and

³⁶ Verizon NPRM Comments at 2.

³⁷ See 17 U.S.C. 1504(g), 1506(y), (z); 86 FR at 16164–65.

³⁸ 86 FR at 21994.

CashApp.”³⁹ The Office appreciates that providing additional payment options could help to advance the statute’s accessibility goals. Presently, however, the Office is unable to accept the alternative forms suggested, including because some are not supported by *Pay.gov*, and due to additional administrative costs. Nevertheless, in the interest of providing future flexibility, the Office is revising this portion of the final rule to remove the references to specific payment methods and instead to simply state that a claimant or counterclaimant shall follow instructions on the Copyright Office website to make electronic payments by *Pay.gov*. Such an approach will enable the Office to consider possible additional methods of payment as *Pay.gov* expands its capabilities.

5. Denied Requests

Finally, commenters addressed the proposed language allowing the Office to deny a request for small claims expedited registration if the requester did not pay the required fee or if the Office determines that the request would be unduly burdensome. Comments submitted by the Copyright Alliance et al. and by SFWA both expressed concern that the proposed rule did not define the term “unduly burdensome.”⁴⁰ The Copyright Alliance et al. recommended guarding against uncertainty by adopting language similar to that provided in the *Compendium of U.S. Copyright Office Practices in the context of special handling requests*.⁴¹ The *Compendium* states that the Office may reject a request for special handling if the Office “is unable to process the request based on the Office’s workload or budget at the time the request is made.”⁴² The Office agrees that this language would provide greater certainty as to the considerations governing denial on this basis. Accordingly, the rule has been revised to provide that if the requisite fee has been paid for small claims expedited registration, the Office will grant the request unless the Office “determines that expedited registration under this section would be unduly burdensome based on the Office’s workload or budget at the time the request is made.” As under the

proposed rule, the Office is authorized to refund the fee in these circumstances.

B. Freedom of Information Act

The final rule also adopts a technical edit to the Office’s FOIA regulations to reflect the CASE Act’s reference to FOIA. The regulatory language provides that “Copyright Claims Board determinations published on the Copyright Office website and related records and information published on that website” may be disclosed under FOIA.⁴³ By statute, all other materials related to CCB proceedings are exempt from disclosure under FOIA.⁴⁴

Commenters raised two issues related to the proposed rule. First, the Copyright Alliance et al. argued that the rule required a technical edit—the addition of a comma before “and related records” to “clarify that only those records published on the Office’s website are . . . subject to FOIA.”⁴⁵ In their view, “[w]ithout a comma preceding ‘and related records,’ it is unclear whether ‘on that website’ is intended to modify both ‘related records and information’ or just ‘information.’”⁴⁶ To clarify, the phrase “on that website” is intended to modify both terms, and therefore only those CCB records published on the Office’s website will be subject to FOIA. The Office is not persuaded, however, that the addition of the suggested comma states that rule any more clearly than the text as proposed. Further, it appears that the commenters’ concern relates primarily to questions regarding which records are considered confidential and subject to a protective order.⁴⁷ Those issues will be addressed in a separate rulemaking. Accordingly, the Office does not believe that the requested change is necessary.

Second, SFWA expressed concern that confidential sales figures submitted to the CCB in connection with proving damages could be “placed on [the CCB’s] website or released in response to a FOIA request.”⁴⁸ SFWA argued that if such information is subject to FOIA, it “could easily discourage many writers and creators of copyrighted works, whom the CASE Act is intended to help, from bringing claims or raising counterclaims.”⁴⁹ The Office recognizes

SFWA’s concern about protecting sensitive or confidential information, but, as noted, the Office intends to address these issues in a separate rulemaking. Accordingly, the conforming amendment for the Office’s FOIA regulations is unchanged in the final rule.

List of Subjects

37 CFR Part 201

Copyright, General provisions.

37 CFR Part 203

Freedom of information.

37 CFR Part 221

Claims, Copyright, Registration.

Final Regulations

For reasons stated in the preamble, the Copyright Office amends 37 CFR chapter II as follows:

PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

■ 2. Amend § 201.3 by redesignating paragraphs (d)(8) through (17) as paragraphs (d)(9) through (18), respectively, and adding new paragraph (d)(8) to read as follows:

§ 201.3 Fees for registration, recordation, and related services, special services, and services performed by the Licensing Division.

* * * * *	
(d) * * *	
(8) Small claims expedited registration fee for each request	\$50
* * * * *	

PART 203—FREEDOM OF INFORMATION ACT: POLICIES AND PROCEDURES

■ 3. The authority citation for part 203 continues to read as follows:

Authority: 5 U.S.C. 552.

■ 4. Amend § 203.1 by adding a sentence at the end of the section to read as follows:

§ 203.1 General.

* * * All information relating to proceedings of the Copyright Claims Board under chapter 15 of the Copyright Act is exempt from disclosure under FOIA, except for Copyright Claims Board determinations published on the Copyright Office website and related records and information published on that website.

■ 5. Add subchapter B, consisting of part 221, to read as follows:

³⁹ Copyright Alliance et al. NPRM Comments at 8–9.

⁴⁰ Copyright Alliance et al. NPRM Comments at 9; SFWA NPRM Comments at 3.

⁴¹ Copyright Alliance et al. NPRM Comments at 9.

⁴² U.S. Copyright Office, *Compendium of U.S. Copyright Office Practices* sec. 623.2 (3d ed. 2021).

⁴³ 86 FR at 21993.

⁴⁴ 17 U.S.C. 1506(t)(4).

⁴⁵ Copyright Alliance et al. NPRM Comments at 10.

⁴⁶ *Id.* at 10 n.17.

⁴⁷ *See id.* at 10 (“[I]nformation provided in the course of discovery, such as documents, interrogatories, testimony, etc. should be presumed to be confidential and should not be published/subject to FOIA.”).

⁴⁸ SFWA NPRM Comments at 3–4.

⁴⁹ *Id.* at 4.

**Subchapter B—Copyright Claims Board,
Library of Congress****PART 221—REGISTRATION**

Sec.

221.1 Registration requirement.

221.2 Small claims expedited registration.

Authority: 17 U.S.C. 702, 1510.**§ 221.1 Registration requirement.**

(a) A claim or counterclaim alleging infringement of an exclusive right in a copyrighted work may not be asserted before the Copyright Claims Board unless the legal or beneficial owner of the copyright has first delivered a completed application, a deposit, and the required fee for registration of the copyright to the Copyright Office and a registration certificate has either been issued or has not been refused.

(b) For a work that has not yet been registered, a claimant or counterclaimant who has a pending application to register the work must indicate on its claim or counterclaim notice that the work is pending registration and must include the work's service request (SR) number that was assigned to the copyright registration claim. If the proceeding cannot continue because of a pending registration, the Copyright Claims Board shall hold proceedings in abeyance until the claimant or counterclaimant provides the Copyright Claims Board with the certificate of registration or the registration number on the certificate of registration or certificate preview. The proceeding shall be dismissed without prejudice if the Copyright Claims Board is notified that the registration application was rejected. If the proceeding has been held in abeyance for more than one year, the Copyright Claims Board may dismiss the claim or counterclaim without prejudice after providing thirty days written notice to all parties to the proceeding.

§ 221.2 Small claims expedited registration.

(a) *Eligibility.* A claimant or counterclaimant alleging infringement of an exclusive right in a copyrighted work before the Copyright Claims Board is eligible to expedite a copyright registration application under this section. This process shall be known as small claims expedited registration.

(b) *Initiating small claims expedited registration.* The small claims expedited registration process can only be initiated after the claimant or counterclaimant has completed an application for copyright registration and the proceeding has become active. To initiate the small claims expedited registration process, the qualifying

claimant or counterclaimant must make a request and pay the required fee as directed by the Copyright Claims Board. Parties should request small claims expedited registration once the proceeding has become active. Parties must not attempt to initiate small claims expedited registration by using the Copyright Office's electronic registration system (eCO).

(c) *Fee—(1) Amount.* The small claims expedited registration fee for each request must be made for the appropriate amount, as prescribed in § 201.3(c). The fee for small claims expedited registration is intended to accelerate the registration process for a qualifying Copyright Claims Board claimant or counterclaimant that already has a pending registration application; it is in addition to, and does not offset, the fee for copyright registration.

(2) *Method of payment.* (i) The fee for small claims expedited registration must be submitted electronically to the Copyright Claims Board and not through the Copyright Office's electronic registration system (eCO).

(ii) A claimant or counterclaimant shall follow instructions on the Copyright Office website to make electronic payments by *Pay.gov*. Applicants may not use a deposit account to make payments for small claims expedited registration.

(3) *No refunds.* The small claims expedited registration fee is not refundable, unless the small claims expedited registration request is denied under paragraph (d) of this section.

(d) *Denied requests.* If the applicant failed to pay the required fee or if the Copyright Office determines that expedited registration under this section would be unduly burdensome based on the Office's workload or budget at the time the request is made, the Office will notify the applicant that the request has been denied and that the copyright registration claim will be examined on a regular basis.

(e) *Granted requests.* If the request for expedited registration under this section is granted, the Office will make every attempt to examine the application or the document within ten business days after notice of the request is delivered by the Copyright Claims Board to the Copyright Office's Office of Registration Policy and Practice, although the Copyright Office cannot guarantee that all applications or all documents will be registered or recorded within that timeframe.

(f) *Identical registration standards.* The Copyright Office will apply the same practices and procedures when examining a copyright registration

claim, regardless of whether the applicant asks for small claims expedited registration.

Dated: August 3, 2021.

Shira Perlmutter,*Register of Copyrights and Director of the
U.S. Copyright Office.*

Approved by:

Carla D. Hayden,*Librarian of Congress.*

[FR Doc. 2021-17696 Filed 8-17-21; 8:45 am]

BILLING CODE 1410-30-P**ENVIRONMENTAL PROTECTION
AGENCY****40 CFR Parts 9 and 721****[EPA-HQ-OPPT-2019-0359; FRL-7486-01-
OCSPP]****RIN 2070-AB27****Significant New Use Rules on Certain
Chemical Substances (19-2.F)****AGENCY:** Environmental Protection
Agency (EPA).**ACTION:** Final rule.

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

DATES: This rule is effective on October 18, 2021. For purposes of judicial review, this rule shall be promulgated at 1 p.m. (e.s.t.) on September 1, 2021.

FOR FURTHER INFORMATION CONTACT:

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

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY

14620; telephone number: (202) 554-1404; email address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

B. How can I access the docket?

The docket includes information considered by the Agency in developing the proposed and final rules. The docket for this action, identified by docket identification (ID) number EPA-HQ-OPPT-2019-0359, is available at <https://www.regulations.gov> and at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Please review the visitor instructions and additional information about the docket available at <https://www.epa.gov/dockets>.

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

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

II. Background

A. What action is the Agency taking?

EPA is finalizing SNURs under TSCA section 5(a)(2) for chemical substances which were the subject of PMNs P-16-400, P-17-119, P-17-191, P-17-220, P-17-387, P-17-388, P-18-7, P-18-8, P-18-77, P-18-85, P-18-101, P-18-107, P-18-118, P-18-119, P-18-152, P-18-169, P-18-238, P-18-307, P-18-312, P-19-8, P-19-9, P-19-26, P-19-27, and P-19-45. These SNURs require persons who intend to manufacture or process any of these chemical substances for an activity that is designated as a significant new use to notify EPA at least 90 days before commencing that activity.

Previously, in the **Federal Register** of August 6, 2019 (84 FR 38159) (FRL-9996-62), EPA proposed SNURs for the chemical substances being finalized in this **Federal Register** document, in addition to proposing SNURs for other chemical substances, which will be addressed in a subsequent **Federal Register** document. More information on the specific chemical substances subject to this final rule can be found in the **Federal Register** document proposing the SNURs. The docket includes information considered by the Agency in developing the proposed and final rules, including the public comments received on the proposed rules that are described in Unit IV.

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

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

C. Do the SNUR general provisions apply?

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. Pursuant to 40 CFR 721.1(c), persons subject to these SNURs must comply with the same

SNUN requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA sections 5(b) and 5(d)(1), the exemptions authorized by TSCA sections 5(h)(1), 5(h)(2), 5(h)(3), and 5(h)(5) and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA must either determine that the significant new use is not likely to present an unreasonable risk of injury or take such regulatory action as is associated with an alternative determination before manufacture or processing for the significant new use can commence. If EPA determines that the significant new use is not likely to present an unreasonable risk, EPA is required under TSCA section 5(g) to make public, and submit for publication in the **Federal Register**, a statement of EPA's findings.

III. Significant New Use Determination

A. Determination Factors

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

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

In determining what would constitute a significant new use for the chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances and potential human exposures and environmental releases that may be associated with the substances, in the context of the four bulleted TSCA section 5(a)(2) factors listed in this unit.

During its review of the chemical substances that are the subjects of these SNURs and as further discussed in Unit VI., EPA identified potential risk concerns associated with other circumstances of use that, while not intended or reasonably foreseen, may occur in the future. EPA is designating those other circumstances of use as significant new uses.

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

By this rule, EPA is establishing certain significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2 and 40 CFR part 720, subpart E. Absent a final determination or other disposition of the confidentiality claim under 40 CFR part 2 procedures, EPA is required to keep this information confidential. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI, at 40 CFR 721.1725(b)(1) and has referenced it to apply to other SNURs.

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

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

IV. Public Comments

EPA received public comments from three identifying entities on the proposed rule. The Agency's responses are presented in the Response to Public

Comments document that is available in the docket for this rule. EPA made changes to two of the proposed rules based on these comments, as described in the response to comments.

V. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for chemical substances in 40 CFR part 721, subpart E. In Unit IV. of the proposed SNUR, EPA provided the following information for each chemical substance:

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

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

VI. Rationale and Objectives of the Rule

A. Rationale

The chemical substances that are the subjects of these SNURs received "not likely to present an unreasonable risk" determinations under TSCA section 5(a)(3)(C) based on EPA's review of the intended, known, and reasonably foreseen conditions of use. However, EPA has identified other circumstances that, should they occur in the future, even if not reasonably foreseen, may present risk concerns. Specifically, EPA has determined that deviations from the protective measures identified in the PMN submissions could result in changes in the type or form of exposure to the chemical substances, increased exposures to the chemical substances, and/or changes in the reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of the chemical substances. These SNURs identify as a significant new use manufacturing, processing, use, distribution in commerce, or disposal that does not conform to the protective measures identified in the submissions. As a result, those significant new uses cannot occur without first going through a separate, subsequent EPA review and determination process associated with a SNUN.

B. Objectives

EPA is issuing these SNURs because the Agency wants:

- To have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing a listed chemical substance for the described significant new use.

- To be obligated to make a determination under TSCA section 5(a)(3) regarding the use described in the SNUN, under the conditions of use. The Agency will either determine under section 5(a)(3)(C) that the significant new use is not likely to present an unreasonable risk, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use, or make a determination under TSCA section 5(a)(3)(A) or (B) and take the required regulatory action associated with the determination, before manufacture or processing for the significant new use of the chemical substance can occur.

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

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

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

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have undergone premanufacture review. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN. Therefore, for chemical substances for which an NOC has not been submitted, EPA concludes that the designated significant new uses are not ongoing.

When the chemical substances identified in this rule are added to the TSCA Inventory, EPA recognizes that, before the rule is effective, other persons might engage in a use that has been identified as a significant new use. However, the identities of many of the chemical substances subject to this rule have been claimed as confidential (per 40 CFR 720.85). Based on this, the Agency believes that it is highly

unlikely that any of the significant new uses described in the regulatory text of this rule are ongoing.

EPA designated August 6, 2019 (the date of FR publication of the proposed rule) as the cutoff date for determining whether the new use is ongoing. The objective of EPA's approach is to ensure that a person cannot defeat a SNUR by initiating a significant new use before the effective date of the final rule.

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

VIII. Development and Submission of Information

EPA recognizes that TSCA section 5 does not require development of any particular new information (e.g., generating test data) before submission of a SNUN. There is an exception: If a person is required to submit information for a chemical substance pursuant to a rule, Order or consent agreement under TSCA section 4, then TSCA section 5(b)(1)(A) requires such information to be submitted to EPA at the time of submission of the SNUN.

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

EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol election. Furthermore, pursuant to TSCA section 4(h), which pertains to reduction of testing in vertebrate

animals, EPA encourages consultation with the Agency on the use of alternative test methods and strategies (also called New Approach Methodologies, or NAMs), if available, to generate the recommended test data. EPA encourages dialog with Agency representatives to help determine how best the submitter can meet both the data needs and the objective of TSCA section 4(h). For more information on alternative test methods and strategies to reduce vertebrate animal testing, visit <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/alternative-test-methods-and-strategies-reduce>.

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

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

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

IX. SNUN Submissions

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

X. Economic Analysis

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

XI. Statutory and Executive Order Reviews

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

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

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

B. Paperwork Reduction Act (PRA)

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

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

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

C. Regulatory Flexibility Act (RFA)

Pursuant to RFA section 605(b), 5 U.S.C. 601 *et seq.*, I hereby certify that

promulgation of this SNUR would not have a significant adverse economic impact on a substantial number of small entities. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the final rule as a “significant new use.” Because these uses are “new,” based on all information currently available to EPA, it appears that no small or large entities presently engage in such activities. A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. Although some small entities may decide to pursue a significant new use in the future, EPA cannot presently determine how many, if any, there may be. However, EPA’s experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemicals, the Agency receives only a small number of notices per year. For example, the number of SNUNs received was seven in Federal fiscal year (FY) 2013, 13 in FY2014, six in FY2015, 12 in FY2016, 13 in FY2017, and 11 in FY2018. Only a fraction of these were from small businesses. In addition, the Agency currently offers relief to qualifying small businesses by reducing the SNUN submission fee from \$16,000 to \$2,800. This lower fee reduces the total reporting and recordkeeping of cost of submitting a SNUN to about \$10,116 for qualifying small firms. Therefore, the potential economic impacts of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL-5597-1), the Agency presented its general determination that final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act (UMRA)

Based on EPA’s experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this action. As such, EPA has determined that this action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the

requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

E. Executive Order 13132: Federalism

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

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

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

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

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

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

I. National Technology Transfer and Advancement Act (NTTAA)

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

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

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

K. Congressional Review Act (CRA)

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

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

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

Dated: August 9, 2021.

Tala Henry,

Deputy Director, Office of Pollution Prevention and Toxics.

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

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

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

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1, amend the table by adding entries for §§ 721.11300 through 721.11304, 721.11306, 721.11307, 721.11309 through 721.11314, 721.11317, 721.11318, and 721.11322 through 721.11329 in numerical order under the undesignated center heading “Significant New Uses of Chemical Substances” to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

40 CFR citation	OMB control No.
*	*
*	*
*	*
*	*
Significant New Uses of Chemical Substances	
*	*
721.11300	2070–0012

40 CFR citation	OMB control No.
721.11301	2070-0012
721.11302	2070-0012
721.11303	2070-0012
721.11304	2070-0012
* * *	*
721.11306	2070-0012
721.11307	2070-0012
* * *	*
721.11309	2070-0012
721.11310	2070-0012
721.11311	2070-0012
721.11312	2070-0012
721.11313	2070-0012
721.11314	2070-0012
* * *	*
721.11317	2070-0012
721.11318	2070-0012
* * *	*
721.11322	2070-0012
721.11323	2070-0012
721.11324	2070-0012
721.11325	2070-0012
721.11326	2070-0012
721.11327	2070-0012
721.11328	2070-0012
721.11329	2070-0012
* * *	*
* * *	*

PART 721—SIGNIFICANT NEW USES OF CHEMICAL SUBSTANCES

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

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

Subpart E—Significant New Uses for Specific Chemical Substances

■ 4. Add §§ 721.11300 through 721.11304 to read as follows:

Sec.	
* * *	*
721.11300	Alkanes, C11–16-branched and linear.
721.11301	Alkyl alkenoic acid, alkoxyalkyl ester, polymer with alkyl alkenoate, alkyl alkyl alkenoate and tris alkyl silyl alkyl alkenoate (generic).
721.11302	Alkyldiamine, aminoalkyl dimethylaminoalkyl dimethyl-, reaction products with propylene oxide (generic).
721.11303	2-oxepanone, reaction products with alkylenediamine-alkyleneimine polymer, 2-[[[(2-alkyl)oxy]alkyl]oxirane and tetrahydro-2H-pyran-2-one (generic).
721.11304	Dicarboxylic acids, polymers with alkanolic acid, alkanediol, substituted-alkylalkanoic acid, substituted alkyl carbomonocycle, alkanedioic acid and alkanediol, alkanolamine blocked, compds. with alkanolamine (generic).
* * *	*

§ 721.11300 Alkanes, C11–16-branched and linear.

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

(1) The chemical substance identified as alkanes, C11–16-branched and linear (PMN P–16–400; CAS No. 1809170–78–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o). It is a significant new use to use the substance other than as a chemical intermediate, in cured coatings, cleaning fluids, metalworking fluids/rolling oils, and in agrochemicals.

(ii) [Reserved]

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

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

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

§ 721.11301 Alkyl alkenoic acid, alkoxyalkyl ester, polymer with alkyl alkenoate, alkyl alkyl alkenoate and tris alkyl silyl alkyl alkenoate (generic).

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

(1) The chemical substance identified generically as alkyl alkenoic acid, alkoxyalkyl ester, polymer with alkyl alkenoate, alkyl alkyl alkenoate and tris alkyl silyl alkyl alkenoate (PMN P–17–119) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o). It is a significant new use to use the substance other than as a chemical intermediate, in cured coatings, cleaning fluids, metalworking fluids/rolling oils, and in agrochemicals.

(ii) [Reserved]

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

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

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

§ 721.11301 Alkyl alkenoic acid, alkoxyalkyl ester, polymer with alkyl alkenoate, alkyl alkyl alkenoate and tris alkyl silyl alkyl alkenoate (generic).

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

(1) The chemical substance identified generically as alkyl alkenoic acid, alkoxyalkyl ester, polymer with alkyl alkenoate, alkyl alkyl alkenoate and tris alkyl silyl alkyl alkenoate (PMN P–17–119) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

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

(ii) [Reserved]

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

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

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

§ 721.11302 Alkyldiamine, aminoalkyl dimethylaminoalkyl dimethyl-, reaction products with propylene oxide (generic).

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

(1) The chemical substance identified generically as alkyldiamine, aminoalkyl dimethylaminoalkyl dimethyl-, reaction products with propylene oxide (PMN P–17–191) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the PMN substance in any manner that generates a spray, mist, or aerosol.

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are

applicable to manufacturers and processors of this substance.

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

§ 721.11303 2-oxepanone, reaction products with alkylenediamine-alkyleneimine polymer, 2-[[[(2-alkyl)oxy]alkyl]oxirane and tetrahydro-2H-pyran-2-one (generic).

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

(1) The chemical substance identified generically as 2-oxepanone, reaction products with alkylenediamine-alkyleneimine polymer, 2-[[[(2-alkyl)oxy]alkyl]oxirane and tetrahydro-2H-pyran-2-one (PMN P-17-220) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (j). It is a significant new use to manufacture or import the PMN substance other than in liquid form.

(ii) [Reserved]

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

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

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

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

§ 721.11304 Dicarboxylic acids, polymers with alkanolic acid, alkanediol, substituted-alkylalkanoic acid, substituted alkyl carbomonocycle, alkanedioic acid and alkanediol, alkanolamine blocked, compds. with alkanolamine (generic).

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

(1) The chemical substances identified generically as dicarboxylic acids, polymers with alkanolic acid, alkanediol, substituted-alkylalkanoic acid, substituted alkyl carbomonocycle, alkanedioic acid and alkanediol, alkanolamine blocked, compds. with alkanolamine (PMNs P-17-387 and P-17-388) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the PMN substances such that the proportion of amine counterions is greater than 4% by weight, isocyanate residuals are present at greater than 0.1% by weight, or the proportion of the acid group is greater than 20% by weight. It is a significant new use to manufacture, process, or use the PMN substances such that the average molecular weight is less than the confidential molecular weight specified in the PMNs, or such that the proportion of the low molecular weight species is greater than the confidential values specified in the PMNs for the 500 and 1000 Dalton species.

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of these substances.

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

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

■ 5. Add § 721.11306 to read as follows:

§ 721.11306 Glycerides, soya mono- and di-, epoxidized, acetates.

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

(1) The chemical substance identified as glycerides, soya mono- and di-, epoxidized, acetates (PMN P-18-7; CAS No. 2097734-14-8) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance in any manner that generates a dust containing the substance. It is a significant new use to manufacture or process the substance at greater than 20% by weight in consumer products.

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are

applicable to manufacturers and processors of this substance.

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

■ 6. Add § 721.11307 to read as follows:

§ 721.11307 Glycerides, C16-18 and C18-unsatd. mono- and di-, epoxidized, acetates.

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

(1) The chemical substance identified as glycerides, C16-18 and C18-unsatd. mono- and di-, epoxidized, acetates (PMN P-18-8; CAS No. 2097734-15-9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance in any manner that generates a dust containing the substance. It is a significant new use to manufacture or process the substance at greater than 20% by weight in consumer products.

(ii) [Reserved]

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

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

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

■ 7. Add §§ 721.11309 through 721.11314 to read as follows:

Sec.

* * * * *

721.11309 Urea, reaction products with N-butylphosphorothioic triamide and formaldehyde.

721.11310 Fatty acids reaction products with ethyleneamines and dialkyl ester (generic).

721.11311 Pentaerythritol, mixed esters with linear and branched fatty acids (generic).

721.11312 Alcohol capped polycarbodiimide from diethyldiisocyanatobenzene (generic).

721.11313 Oxirane, 2-methyl-, polymer with methoxirane homopolymer, 1,1'-methylenebis[4-isocyanatobenzene], and glycerolpropylene oxide polymer (generic).

721.11314 Oxirane, 2-methyl-, polymer with methoxirane homopolymer, 1,1'-methylenebis[isocyanatobenzene], and glycerol-propylene oxide polymer (generic).

* * * * *

§ 721.11309 Urea, reaction products with N-butylphosphorothioic triamide and formaldehyde.

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

(1) The chemical substance identified as urea, reaction products with N-butylphosphorothioic triamide and formaldehyde (PMN P-18-77; CAS No. 2093385-47-6) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

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

(ii) [Reserved]

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

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

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

§ 721.11310 Fatty acids reaction products with ethyleneamines and dialkyl ester (generic).

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

(1) The chemical substance identified generically as fatty acids reaction products with ethyleneamines and dialkyl ester (PMN P-18-85) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

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

(ii) [Reserved]

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

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

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

§ 721.11311 Pentaerythritol, mixed esters with linear and branched fatty acids (generic).

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

(1) The chemical substance identified generically as pentaerythritol, mixed esters with linear and branched fatty acids (PMN P-18-101) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(y)(1).

(ii) [Reserved]

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

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

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

§ 721.11312 Alcohol capped polycarbodiimide from diethyldiisocyanatobenzene (generic).

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

(1) The chemical substance identified generically as alcohol capped polycarbodiimide from diethyldiisocyanatobenzene (PMN P-18-107) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture the substance to contain greater than 0.1% residual isocyanate by weight.

(ii) [Reserved]

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

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

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

§ 721.11313 Oxirane, 2-methyl-, polymer with methoxirane homopolymer, 1,1'-methylenebis[4-isocyanatobenzene], and glycerolpropylene oxide polymer (generic).

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

(1) The chemical substance identified generically as oxirane, 2-methyl-, polymer with methoxirane homopolymer, 1,1'-methylenebis[4-isocyanatobenzene], and glycerolpropylene oxide polymer (PMN P-18-118) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

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

It is a significant new use to manufacture, process, or use the substance with greater than 0.1% residual isocyanate by weight.

(ii) [Reserved]

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

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

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

§ 721.11314 Oxirane, 2-methyl-, polymer with methoxirane homopolymer, 1,1'-methylenebis[isocyanatobenzene], and glycerol-propylene oxide polymer (generic).

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

(1) The chemical substance identified generically as oxirane, 2-methyl-, polymer with methoxirane homopolymer, 1,1'-methylenebis[isocyanatobenzene], and glycerol-propylene oxide polymer (PMN P-18-119) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o). It is a significant new use to manufacture, process, or use the substance in any manner that results in inhalation exposures. It is a significant new use to manufacture, process, or use the substance with greater than 0.1% residual isocyanate by weight.

(ii) [Reserved]

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

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

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

■ 8. Add § 721.11317 to read as follows:

§ 721.11317 Hydrolyzed functionalized di-amino silanol polymer (generic).

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

(1) The chemical substance identified generically as hydrolyzed functionalized di-amino silanol polymer (PMN P-18-52) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the PMN substance in any manner that results in inhalation exposure.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N=3.

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

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

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

■ 9. Add § 721.11318 to read as follows:

§ 721.11318 Propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-, polymer with dimethyl carbonate, 1,6-hexanediol, diamine and 1,1'-methylenebis[4-isocyanatocyclohexane], pentaerythritol triacrylate-blocked, compds. with triethylamine (generic).

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

(1) The chemical substance identified generically as propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-, polymer with dimethyl carbonate, 1,6-hexanediol, diamine and 1,1'-methylenebis[4-isocyanatocyclohexane], pentaerythritol triacrylate-blocked, compds. with triethylamine (PMN P-18-169) is subject to reporting under

this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(2)(i) and (a)(3) through (5). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50, or at least 1000 if the substance is spray-applied.

(ii) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture (including import) the PMN substance with a triethylamine concentration greater than the confidential concentration stated in the PMN.

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

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

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

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

■ 10. Add §§ 721.11322 through 721.11329 to read as follows:

Sec.

* * * * *

721.11322 Saccharide reaction products with acid anhydride, etherified (generic).

721.11323 Alkyl alkenoic acid, alkyl ester, telomer with alkyl alkenoate, substituted alkyl alkyl alkenoate, alkylthiol, substituted carbomonocycle, hydroxyalkyl alkyl alkenoate and alkyl alkyl alkenoate (generic).

721.11324 Formaldehyde, polymer with 2-phenoxyalkanol and .alpha.-phenyl-.omega.-hydroxypoly(oxy-1,2-alkylenediyl), dihydrogen phosphate 2-phenoxyalkyl hydrogen phosphate, alkaline salt (generic).

721.11325 Substituted polyalkylenepolycarbomonocycle ester, polymer with dialkanolamine, [(hydroxyalkoxy)carbonyl] derivs., (alkoxyalkoxy)alkanol-blocked (generic).

721.11326 Carbomonocycles, polymer with haloalkyl-substituted heteromonocycle and hydro-hydroxypoly[oxy(alkyl-alkanediyl)], dialkyl-alkanediamine-terminated, hydroxyalkylated acetates (salts) (generic).

721.11327 Alkanoic acid, compds. with substituted carbomonocycle-dialkyl-alkanediamine-halosubstituted heteromonocycle-polyalkylene glycol polymer dialkanolamine reaction products (generic).

721.11328 Substituted carbomonocycle, polymer with haloalkyl substituted heteromonocycle, dialkyl-alkanediamine and hydro-hydroxypoly[oxy(alkylalkanediyl)], reaction products with metal oxide and dialkanolamine, acetates (salts) (generic).

721.11329 Non-metal tetrakis (hydroxyalkyl)-, halide, polymer with amide oxidized (generic).

§ 721.11322 Saccharide reaction products with acid anhydride, etherified (generic).

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

(1) The chemical substance identified generically as saccharide reaction products with acid anhydride, etherified (PMN P-18-238) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

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

(ii) [Reserved]

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

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

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

§ 721.11323 Alkyl alkenoic acid, alkyl ester, telomer with alkyl alkenoate, substituted alkyl alkyl alkenoate, alkylthiol, substituted carbomonocycle, hydroxyalkyl alkyl alkenoate and alkyl alkyl alkenoate (generic).

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

(1) The chemical substance identified generically as alkyl alkenoic acid, alkyl ester, telomer with alkyl alkenoate, substituted alkyl alkyl alkenoate, alkylthiol, substituted carbomonocycle, hydroxyalkyl alkyl alkenoate and alkyl alkyl alkenoate (PMN P-18-307) is subject to reporting under this section

for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture (including import) the PMN substance such that the weight percent of low molecular weight species below 1000 Daltons is greater than 5%.

(ii) [Reserved]

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

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

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

§ 721.11324 Formaldehyde, polymer with 2-phenoxyalkanol and .alpha.-phenyl-.omega.-hydroxypoly(oxy-1,2-alkylenediyl), dihydrogen phosphate 2-phenoxyalkyl hydrogen phosphate, alkaline salt (generic).

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

(1) The chemical substance identified generically as formaldehyde, polymer with 2-phenoxyalkanol and .alpha.-phenyl-.omega.-hydroxypoly(oxy-1,2-alkylenediyl), dihydrogen phosphate 2-phenoxyalkyl hydrogen phosphate, alkaline salt (PMN P-18-312) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance in any manner that results in inhalation exposure. It is a significant new use to manufacture the PMN substance such that the weight percent of low molecular weight species below 500 Daltons is greater than 20%.

(ii) [Reserved]

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

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

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

§ 721.11325 Substituted polyalkylenepolycarbomonocycle ester, polymer with dialkanolamine, [(hydroxyalkoxy)carbonyl] derivs., (alkoxyalkoxy)alkanol-blocked (generic).

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

(1) The chemical substance identified generically as substituted polyalkylenepolycarbomonocycle ester, polymer with dialkanolamine, [(hydroxyalkoxy)carbonyl] derivs., (alkoxyalkoxy)alkanol-blocked (PMN P-19-8) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(w)(1) and (2), (x)(1) and (2), and (y)(1) and (2).

(ii) [Reserved]

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

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

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

§ 721.11326 Carbomonocycles, polymer with haloalkyl-substituted heteromonocycle and hydro-hydroxypoly[oxy(alkyl-alkanediyl)], dialkyl-alkanediamine-terminated, hydroxyalkylated acetates (salts) (generic).

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

(1) The chemical substance identified generically as carbomonocycles, polymer with haloalkyl-substituted heteromonocycle and hydro-hydroxypoly[oxy(alkyl-alkanediyl)], dialkyl-alkanediamine-terminated, hydroxyalkylated acetates (salts) (PMN P-19-9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance in any manner that results in inhalation exposure to vapor, particulate, mist, or aerosols. It is a significant new use to manufacture the PMN substance beyond an annual production volume of 85,000 kg.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part

apply to this section except as modified by this paragraph (b).

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

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

§ 721.11327 Alkanoic acid, compds. with substituted carbomonocycle-dialkyl-alkanediamine-halosubstituted heteromonocycle-polyalkylene glycol polymer dialkanolamine reaction products (generic).

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

(1) The chemical substance identified generically as alkanic acid, compds. with substituted carbomonocycle-dialkyl-alkanediamine-halosubstituted heteromonocycle-polyalkylene glycol polymer dialkanolamine reaction products (PMN P-19-26) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance in any manner that results in inhalation exposure to vapor, particulate, mist, or aerosols.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N=15.

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

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

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

§ 721.11328 Substituted carbomonocycle, polymer with haloalkyl substituted heteromonocycle, dialkyl-alkanediamine and hydro-hydroxypoly[oxy(alkylalkanediyl)], reaction products with metal oxide and dialkanolamine, acetates (salts) (generic).

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

(1) The chemical substance identified generically as substituted carbomonocycle, polymer with haloalkyl substituted heteromonocycle, dialkyl-alkanediamine and hydro-hydroxypoly[oxy(alkylalkanediyl)], reaction products with metal oxide and

dialkanolamine, acetates (salts) (PMN P-19-27) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the PMN substance in any manner that results in inhalation exposure to vapor, particulate, mist, or aerosols. It is a significant new use to manufacture the PMN substance beyond an annual production volume of 95,600 kg.

(ii) [Reserved]

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

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

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

§ 721.11329 Non-metal tetrakis (hydroxyalkyl)-, halide, polymer with amide oxidized (generic).

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

(1) The chemical substance identified generically as non-metal tetrakis (hydroxyalkyl)-, halide, polymer with amide oxidized (PMN P-19-45) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j). It is a significant new use to manufacture, process, or use the substance in any manner that results in inhalation exposure. It is a significant new use to manufacture the substance to contain greater than 0.1% residual unbound formaldehyde by weight.

(ii) [Reserved]

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

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

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

(3) *Determining whether a specific use is subject to this section.* The provisions

of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

[FR Doc. 2021-17388 Filed 8-17-21; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA-HQ-OPPT-2018-0627, EPA-HQ-OPPT-2018-0777, EPA-HQ-OPPT-2019-0359, EPA-HQ-OPPT-2019-0228, EPA-HQ-OPPT-2019-0494, and EPA-HQ-OPPT-2019-0530; FRL-8000-02-OCSPP]

RIN 2070-AB27

Significant New Use Rules on Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for chemical substances that were the subject of premanufacture notices (PMNs). The SNURs require persons who intend to manufacture (defined by statute to include import) or process any of these chemical substances for an activity that is designated as a significant new use by this rule to notify EPA at least 90 days before commencing that activity. The required notification initiates EPA's evaluation of the use, under the conditions of use for that chemical substance, within the applicable review period. Persons may not commence manufacture or processing for the significant new use until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required by that determination.

DATES: This rule is effective on October 18, 2021. For purposes of judicial review, this rule shall be promulgated at 1 p.m. (e.s.t.) on September 1, 2021.

FOR FURTHER INFORMATION CONTACT:

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

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import provisions promulgated at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and Orders under TSCA, which would include the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of this rule are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see 40 CFR 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. How can I access the dockets?

The dockets include information considered by the Agency in developing the proposed and final rules. The dockets for this action, identified by docket identification (ID) numbers EPA-HQ-OPPT-2018-0627, -2018-0777, -2019-0359, -2019-0228, -2019-0494, and -2019-0530, are available at <https://www.regulations.gov> and at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280.

Due to the public health concerns related to COVID-19, the EPA Docket

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

II. Background

A. What action is the Agency taking?

EPA is finalizing SNURs under TSCA section 5(a)(2) for certain chemical substances which were the subject of PMNs. EPA will address the other proposed SNURs in future **Federal Register** notices.

Previously, EPA proposed SNURs for these chemical substances and established the record for these SNURs in the following **Federal Registers** and docket ID numbers:

- October 3, 2018 (83 FR 49903) (FRL-9983-81); Docket ID No. EPA-HQ-OPPT-2018-0627;
- July 31, 2019 (84 FR 37199) (FRL-9994-62); Docket ID No. EPA-HQ-OPPT-2018-0777;
- August 6, 2019 (84 FR 38158) (FRL-9996-62); Docket ID No. EPA-HQ-OPPT-2019-0359;
- October 11, 2019 (84 FR 54816) (FRL-9998-64); Docket ID No. EPA-HQ-OPPT-2019-0228;
- November 4, 2019 (84 FR 59335) (FRL-10000-54); Docket ID No. EPA-HQ-OPPT-2019-0494; and
- December 6, 2019 (84 FR 66855) (FRL-10001-48); Docket ID No. EPA-HQ-OPPT-2019-0530.

The dockets include information considered by the Agency in developing the proposed and final rules, including public comments and EPA's responses to the public comments received.

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

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

C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. Pursuant to 40 CFR 721.1(c), persons subject to

these SNURs must comply with the significant new use notice (SNUN) requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA sections 5(b) and 5(d)(1), the exemptions authorized by TSCA sections 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN and before the manufacture or processing for the significant new use can commence, EPA must either determine that the significant new use is not likely to present an unreasonable risk of injury or take such regulatory action as is associated with an alternative determination. If EPA determines that the significant new use is not likely to present an unreasonable risk, EPA is required under TSCA section 5(g) to make public, and submit for publication in the **Federal Register**, a statement of EPA's findings.

III. Significant New Use Determination

A. Considerations for Significant New Use Determinations

When the Agency issues an order under TSCA section 5(e), section 5(f)(4) requires that the Agency consider whether to promulgate a SNUR for any use not conforming to the restrictions of the TSCA Order or publish a statement describing the reasons for not initiating the rulemaking. TSCA section 5(a)(2) states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

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

In determining what would constitute a significant new use for the chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, and potential human exposures and environmental releases that may be associated with possible uses of these chemical substances, in the context of the four

bulleted TSCA section 5(a)(2) factors listed in this unit.

B. Procedures for Significant New Uses Claimed as CBI

By this rule, EPA is establishing certain significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2 and 40 CFR part 720, subpart E. Absent a final determination or other disposition of the confidentiality claim under 40 CFR part 2 procedures, EPA is required to keep this information confidential. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI, at 40 CFR 721.1725(b)(1) and has referenced it to apply to other SNURs.

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

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

IV. Public Comments on Proposed Rule and EPA Responses

EPA received public comments from nine identifying entities on the

proposed rules. The Agency's responses are presented in the Response to Public Comments document that is available in each of the dockets for these rules. EPA made changes to three of the proposed rules as described in the response to comments.

V. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for chemical substances in 40 CFR part 721, subpart E. In Unit IV. of the proposed SNURs, EPA provided the following information for each chemical substance:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as confidential business information (CBI)).
- Chemical Abstracts Service (CAS) Registry number (if assigned for non-confidential chemical identities).
- Effective date of and basis for the TSCA Order.
- Potentially Useful Information. This is information identified by EPA that would help characterize the potential health and/or environmental effects of the chemical substances if a manufacturer or processor is considering submitting a SNUN for a significant new use designated by the SNUR.
- CFR citation assigned in the regulatory text section of these rules.

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

These final rules include PMN substances that are subject to orders issued under TSCA section 5(e)(1)(A), as required by the determinations made under TSCA section 5(a)(3)(B). Those TSCA Orders require protective measures to limit exposures or otherwise mitigate the potential unreasonable risk. The final SNURs identify as significant new uses any manufacturing, processing, use, distribution in commerce, or disposal that does not conform to the restrictions imposed by the underlying TSCA Orders, consistent with TSCA section 5(f)(4).

Where EPA determined that the PMN substance may present an unreasonable risk of injury to human health via inhalation exposure, the underlying TSCA Order usually requires that potentially exposed employees wear specified respirators unless actual measurements of the workplace air show that air-borne concentrations of the PMN substance are below a New

Chemical Exposure Limit (NCEL). The comprehensive NCELS provisions in TSCA Orders include requirements addressing performance criteria for sampling and analytical methods, periodic monitoring, respiratory protection, and recordkeeping. No comparable NCEL provisions currently exist in 40 CFR part 721, subpart B, for SNURs. Therefore, for these cases, the individual SNURs in 40 CFR part 721, subpart E, will state that persons subject to the SNUR who wish to pursue NCELS as an alternative to the 40 CFR 721.63 respirator requirements may request to do so under 40 CFR 721.30. EPA expects that persons whose 40 CFR 721.30 requests to use the NCELS approach for SNURs that are approved by EPA will be required to comply with NCELS provisions that are comparable to those contained in the corresponding TSCA Order.

VI. Rationale and Objectives of the Rule

A. Rationale

During review of the PMNs submitted for the chemical substances that are subject to these SNURs and as further discussed in Unit IV. of the proposed rules, EPA concluded that regulation was warranted under TSCA section 5(e), pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the chemical substances. Based on such findings, TSCA Orders requiring the use of appropriate exposure controls were negotiated with the PMN submitters. As a general matter, EPA believes it is necessary to follow TSCA Orders with a SNUR that identifies the absence of those protective measures as significant new uses to ensure that all manufacturers and processors—not just the original submitter—are held to the same standard.

B. Objectives

EPA is issuing these SNURs because the Agency wants to

- Receive notice of any person's intent to manufacture or process a listed chemical substance for the described significant new use before that activity begins.
- Have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing a listed chemical substance for the described significant new use; and
- Be obligated to make a determination under TSCA section 5(a)(3) regarding the use described in the SNUN, under the conditions of use. The Agency will either determine under TSCA section 5(a)(3)(C) that significant

new use is not likely to present an unreasonable risk, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use, or make a determination under TSCA section 5(a)(3)(A) or (B) and take the required regulatory action associated with the determination, before manufacture or processing for the significant new use of the chemical substance can occur.

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

VII. Applicability of the Significant New Use Designation

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have undergone premanufacture review. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN. Therefore, for chemical substances for which a NOC has not been submitted, EPA concludes that the designated significant new uses are not ongoing.

When chemical substances identified in this rule are added to the TSCA Inventory, EPA recognizes that, before the rule is effective, other persons might engage in a use that has been identified as a significant new use. However, TSCA Orders have been issued for all the chemical substances that are the subject of this rule, and the PMN submitters are prohibited by the TSCA Orders from undertaking activities which will be designated as significant new uses. The identities of 50 of the 57 chemical substances subject to this rule have been claimed as confidential (per 40 CFR 720.85). Based on this, the Agency believes that it is highly unlikely that any of the significant new uses described in the regulatory text of this rule are ongoing.

Furthermore, EPA designated the publication dates of the proposed rules (see Unit II.) as the cutoff dates for determining whether the new uses are ongoing. The objective of EPA's approach has been to ensure that a person could not defeat a SNUR by initiating a significant new use before the effective date of the final rule.

In the unlikely event that a person began commercial manufacture or processing of the chemical substances for a significant new use identified as of the abovementioned dates, that person will have to cease any such activity upon the effective date of the final rule. To resume their activities, that person would have to first comply with all applicable SNUR notification requirements and wait until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required with that determination.

VIII. Development and Submission of Information

EPA recognizes that TSCA section 5 does not require development of any particular new information (e.g., generating test data) before submission of a SNUN. There is an exception:

If a person is required to submit information for a chemical substance pursuant to a rule, TSCA Order or consent agreement under TSCA section 4, then TSCA section 5(b)(1)(A) requires such information to be submitted to EPA at the time of submission of the SNUN.

In the absence of a rule, TSCA Order, or consent agreement under TSCA section 4 covering the chemical substance, persons are required only to submit information in their possession or control and to describe any other information known to them or reasonably ascertainable by them (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. Unit IV. of the proposed rule lists potentially useful information for all SNURs listed in this document.

Descriptions are provided for informational purposes. The information identified in Unit IV. of the proposed rule will be potentially useful to EPA's evaluation in the event that someone submits a SNUN for the significant new use. Companies who are encouraged, but not required, to develop the information on the substance.

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

data needs and the objective of TSCA section 4(h). For more information on alternative test methods and strategies to reduce vertebrate animal testing, visit <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/alternative-test-methods-and-strategies-reduce>.

In some of the TSCA Orders for the chemical substances identified in this rule, EPA has established production volume limits in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the chemical substances. These limits cannot be exceeded unless the PMN submitter first submits the results of specified tests that would permit a reasoned evaluation of the potential risks posed by these chemical substances. The SNURs contain the same production volume limits as the TSCA Orders. Exceeding these production limits is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a SNUN at least 90 days in advance of commencement of non-exempt commercial manufacture or processing.

Any request by EPA for the triggered and pended testing described in the TSCA Orders was made based on EPA's consideration of available screening-level data, if any, as well as other available information on appropriate testing for the PMN substances. Further, any such testing request on the part of EPA that includes testing on vertebrates was made after consideration of available toxicity information, computational toxicology and bioinformatics, and high-throughput screening methods and their prediction models.

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

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

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

- Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

IX. SNUN Submissions

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

X. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this rule. EPA's complete economic analyses are available in each docket listed in Unit II.

XI. Statutory and Executive Order Reviews

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

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

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

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not subject to Executive Order 13771 (82 FR 9339, February 3, 2017), because this action is not a significant regulatory action under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

According to the PRA (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The information

collection requirements associated with SNURs have already been approved by OMB pursuant to the PRA under OMB control number 2070-0012 (EPA ICR No. 574). This rule does not impose any burden requiring additional OMB approval.

The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable. EPA is amending the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this action. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. The Information Collection Request (ICR) covering the SNUR activities was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is "good cause" under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) to amend this table without further notice and comment.

If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

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

D. Regulatory Flexibility Act (RFA)

Pursuant to the RFA section 605(b) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of these SNURs would not have a significant adverse economic impact on a substantial number of small entities. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the final

rule as a "significant new use." Because these uses are "new," based on all information currently available to EPA, EPA has concluded that no small or large entities presently engage in such activities. A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. Although some small entities may decide to pursue a significant new use in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemicals, the Agency receives only a small number of notices per year. For example, EPA received 7 SNUNs in Federal fiscal year (FY) 2013, 13 in FY2014, 6 in FY2015, 10 in FY2016, 14 in FY2017, and 11 in FY2018 and only a fraction of these were from small businesses. In addition, the Agency currently offers relief to qualifying small businesses by reducing the SNUN submission fee from \$16,000 to \$2,800. This lower fee reduces the total reporting and recordkeeping of cost of submitting a SNUN to about \$10,116 for qualifying small firms. Therefore, the potential economic impacts of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL-5597-1), the Agency presented its general determination that final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

E. Unfunded Mandates Reform Act (UMRA)

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

F. Executive Order 13132: Federalism

This action will not have a substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and

responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

G. Executive Order 13175: Consultation and Coordination With Indian Tribe Governments

This action does not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This action does not significantly nor uniquely affect the communities of Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175 (65 FR 67249, November 9, 2000), do not apply to this action.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children. EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2-202 of the Executive Order.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

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

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

This action does not entail special considerations of environmental justice related issues as delineated by

Executive Order 12898 (59 FR 7629, February 16, 1994).

XII. Congressional Review Act

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

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

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

Dated: August 9, 2021.

Tala Henry,

Deputy Director, Office of Pollution Prevention and Toxics.

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

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

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

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1, amend the table by adding entries for §§ 721.11150, 721.11267 through 721.11277, 721.11279 through 721.11281, 721.11284, 721.11288, 721.11305, 721.11308, 721.11315 and 721.11316, 721.11319 through 721.11321, 721.11346 through 721.11350, 721.11360 and 721.11361, 721.11372, 721.11383, 721.11390 through 721.11393, 721.11422, and 721.11426 through 721.11443 in numerical order under the undesignated center heading “Significant New Uses of Chemical Substances” to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
Significant New Uses of Chemical Substances	
721.11150	2070–0012
721.11267	2070–0012
721.11268	2070–0012
721.11269	2070–0012
721.11270	2070–0012
721.11271	2070–0012
721.11272	2070–0012
721.11273	2070–0012
721.11274	2070–0012
721.11275	2070–0012
721.11276	2070–0012
721.11277	2070–0012
721.11279	2070–0012
721.11280	2070–0012
721.11281	2070–0012
721.11284	2070–0012
721.11288	2070–0012
721.11305	2070–0012
721.11308	2070–0012
721.11315	2070–0012
721.11316	2070–0012
721.11319	2070–0012
721.11320	2070–0012
721.11321	2070–0012
721.11346	2070–0012
721.11347	2070–0012
721.11348	2070–0012
721.11349	2070–0012
721.11350	2070–0012
721.11360	2070–0012
721.11361	2070–0012
721.11372	2070–0012
721.11383	2070–0012
721.11390	2070–0012
721.11391	2070–0012
721.11392	2070–0012
721.11393	2070–0012
721.11422	2070–0012

40 CFR citation	OMB control No.
721.11426	2070–0012
721.11427	2070–0012
721.11428	2070–0012
721.11429	2070–0012
721.11430	2070–0012
721.11431	2070–0012
721.11432	2070–0012
721.11433	2070–0012
721.11434	2070–0012
721.11435	2070–0012
721.11436	2070–0012
721.11437	2070–0012
721.11438	2070–0012
721.11439	2070–0012
721.11440	2070–0012
721.11441	2070–0012
721.11442	2070–0012
721.11443	2070–0012

PART 721—SIGNIFICANT NEW USES OF CHEMICAL SUBSTANCES

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

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

Subpart E—Significant New Uses for Specific Chemical Substances

■ 4. Add § 721.11150 to read as follows:

§ 721.11150 2-Pyrrolidinone, 1-butyl-

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

(1) The chemical substance identified as 2-pyrrolidinone, 1-butyl- (PMN P–14–627, CAS No. 3470–98–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iv), (a)(3), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(2)(i), butyl or Silver Shield gloves may be used. For purposes of § 721.63(b), the concentration is set at 1.0%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1)(i) and (ix), (g)(2)(i) through (iii) and (v), and (g)(5).

Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used. For purposes of § 721.72(e), the concentration is set at 1.0%.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f). It is a significant new use to import the substance in containers of less than 55 gallons when the concentration of the confidential component identified in the TSCA Order is greater than 5% by weight for any product either intended for sale or distribution for consumer use, including for use in consumer products, or both intended for commercial use and made available to consumers for retail purchase of any kind. It is a significant new use to use or sell the PMN substance in handheld spray applications that generate a vapor, mist or aerosol.

(iv) *Significant new use to import.* It is a significant new use to import the PMN substance other than to be processed or sold for:

(A) Dispersions for industrial coatings (e.g., polyurethane, acrylic, epoxy);

(B) Coating for consumer and professional use;

(C) Adhesives and sealants;

(D) Solvent-borne industrial coatings;

(E) Silicon wafer cleaning in microelectronics in clean rooms;

(F) Photoresist stripping in microelectronics in clean rooms;

(G) Coatings for microelectronics (e.g., casting of polymer films) in clean rooms;

(H) Reaction medium for polymerization, polymer coatings for industrial and professional applications (e.g., wire enamel, non-stick and friction reduction coating) membranes;

(I) Solvent for chemical synthesis reactions (e.g., pharmaceuticals);

(J) Formulation of inks;

(K) Industrial cleaner (e.g., cleaner for wind turbine, oil rigs, large engines);

(L) Solvent for cleaning industrial reactors;

(M) Wax inhibitors (in hydrocarbon lines);

(N) Petrochemical extraction processes;

(O) Paint stripper;

(P) Solvents for production and formulation of fertilizer;

(Q) Solvent for production and formulation of active ingredients for agriculture;

(R) Solvent for formulation of active ingredients for agriculture-end use pesticide product).

(v) *Significant new use to use or sell.* It is a significant new use to use or sell the PMN substance for:

(A) Dispersions for industrial coatings (e.g., polyurethane, acrylic, epoxy) in a concentration greater than 18% in formulated products;

(B) Adhesives and sealants in concentrations greater than 18% in formulated products;

(C) Solvent-borne industrial coatings in concentrations greater than 30% in formulated products;

(D) Coatings for microelectronics (e.g., casting of polymer films) in clean rooms in concentrations greater than 20% in formulated products;

(E) Reaction medium for polymerization, polymer coatings for industrial and professional applications (e.g., wire enamel, non-stick and friction reduction coating) membranes in concentrations greater than 40% in formulated products;

(F) Inks in concentrations greater than 15% in formulated products;

(G) Solvent for chemical synthesis reactions (e.g., pharmaceuticals) in concentrations greater than 40% in formulated products;

(H) Industrial cleaner (e.g., cleaner for wind turbine, oil rigs, large engines) in concentrations greater than 20% in formulated products;

(I) Wax inhibitors (in hydrocarbon lines) in concentrations greater than 20% in formulated products;

(J) Petrochemical extraction processes in concentrations greater than 60% in formulated products;

(K) Paint stripper only for industrial use in concentrations greater than 20% in formulated products;

(L) Solvent for formulation of active ingredients for agriculture-end use pesticide product) in concentrations greater than 70% in formulated products;

(M) Paint removers in concentrations greater than 5% in formulated products intended for sale or distribution for “consumer” use, including “commercial use” when the “saleable good or service” could introduce PMN material into a “consumer” setting;

(N) Coatings in concentrations greater than 1% in formulated products intended for sale or distribution for “consumer” use, including “commercial use” when the “sealable good or service” could introduce PMN material into a “consumer” setting.

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

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

(2) *Limitation or revocation of certain notification requirements.* The

provisions of § 721.185 apply to this section.

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

■ 5. Add §§ 721.11267 through 721.11277 to read as follows:

*	*	*	*	*
721.11267	Silane amine carbonate (generic).			
721.11268	Hydrochlorofluoroolefin (generic).			
721.11269	Fatty acid modified aromatic polyester polyol (generic).			
721.11270	Dodecanedioic acid and 1,6-hexanediol polymer with 3-hydroxy-2,2-dimethylpropyl-2,2-dimethylhydracrylate, neopentylglycol, 1,2-ethanediol, adipic acid, isophthalic acid, terephthalic acid, 2-Oxooxopane, BayFlex 2002H and 1,1'-methylenebis(isocyanatobenzene) (generic).			
721.11271	Ethanone, 1-[4-(4-chlorophenoxy)-2-(trifluoromethyl)phenyl]-.			
721.11272	Vegetable oil, polymer with alkanedioic acid, alkali lignin, diethylene glycol- and polyol-depolymd. poly(ethylene terephthalate) waste plastics and arylcarboxylic acid anhydride (generic).			
721.11273	Vegetable oil, polymer with alkanedioic acid, alkali lignin, diethylene glycol- and polyol-depolymd. poly(ethylene terephthalate) waste plastics (generic).			
721.11274	Waste plastics, poly(ethylene terephthalate), depolymd. with diethylene glycol, polymers with alkanedioic acid, alkali lignin and arylcarboxylic acid anhydride (generic).			
721.11275	Waste plastics, poly(ethylene terephthalate), depolymd. with diethylene glycol and polyol, polymers with alkanedioic acid, alkali lignin and arylcarboxylic acid anhydride (generic).			
721.11276	Vegetable oil, polymer with alkanedioic acid, alkali lignin, diethylene glycol- and polyol-depolymd. poly(ethylene terephthalate) waste plastics and arylcarboxylic acid anhydride (generic).			
721.11277	Vegetable oil, polymer with alkanedioic acid, alkali lignin, diethylene glycol-depolymd. poly(ethylene terephthalate) waste plastics and arylcarboxylic acid anhydride (generic).			

§ 721.11267 Silane amine carbonate (generic).

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

(1) The chemical substance identified generically as silane amine carbonate (PMN P-17-157) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3) through (5), (a)(6)(v) and (vi), and (b). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 1,000. For purposes of § 721.63(b), the concentration is set at 1.0%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1)(i) and (ii), (g)(2)(i) through (v), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used. For purposes of § 721.72(e), the concentration is set at 1.0%.

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

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

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

§ 721.11268 Hydrochlorofluoroolefin (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as hydrochlorofluoroolefin (PMN P-17-295) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3) through (5), (a)(6)(v) and (vi), and (b). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators

must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 10. For purposes of § 721.63(b), the concentration is set at 1.0%.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA Order for this substance. The NCEL is 23.6 mg/m³ (3.9 ppm) as an 8-hour time weighted average. Persons who wish to pursue NCELS as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELS approach are approved by EPA will be required to follow NCELS provisions comparable to those contained in the corresponding TSCA Order.

(B) [Reserved]

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f) and (g)(1) and (2). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Internal organ effects; reproductive effects; fatality. For purposes of § 721.72(g)(2), when using this substance: Avoid skin contact; avoid breathing substance; avoid ingestion; use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 23.6 mg/m³ (3.9 ppm); use skin protection. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (o). For purposes of § 721.80(k), the use is as a refrigerant used in closed systems for chillers (commercial comfort air conditioners) and industrial process refrigeration.

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

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

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

§ 721.11269 Fatty acid modified aromatic polyester polyol (generic).

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

(1) The chemical substances identified generically as fatty acid modified aromatic polyester polyol (PMN P-17-306 and PMN P-17-307) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 1.0%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) and (v), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Internal organ effects; ocular effects. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* It is a significant new use to use an application method that generates a vapor, mist, aerosol, or dust containing the substance resulting in inhalation exposures.

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), are applicable to manufacturers and processors of these substances.

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

§ 721.11270 Dodecanedioic acid and 1,6-hexanediol polymer with 3-hydroxy-2,2-dimethylpropyl-2,2-dimethylhydracrylate, neopentylglycol, 1,2-ethanediol, adipic acid, isophthalic acid, terephthalic acid, 2-Oxoxopane, BayFlex 2002H and 1,1'-methylenebis(isocyanatobenzene) (generic).

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

(1) The chemical substance identified generically as dodecanedioic acid and 1,6-hexanediol polymer with 3-hydroxy-2,2-dimethylpropyl-2,2-dimethylhydracrylate, neopentylglycol, 1,2-ethanediol, adipic acid, isophthalic acid, terephthalic acid, 2-Oxooxopane, BayFlex 2002H and 1,1'-methylenebis(isocyanatobenzene) (PMN P-17-320) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(3) through (5), (a)(6)(v) and (vi), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50. For purposes of § 721.63(6), the airborne form(s) of the substance include particulate (including solids or liquid droplets).

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (d), (f), (g)(1), (g)(2)(i), (ii), (iv), and (v), and (g)(5). For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; respiratory complications; mutagenicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o), (y)(1), and (y)(2). It is a significant new use to manufacture the substance containing more than 1% residual isocyanate by weight.

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

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

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

§ 721.11271 Ethanone, 1-[4-(4-chlorophenoxy)-2-(trifluoromethyl)phenyl]-.

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

(1) The chemical substance identified as ethanone, 1-[4-(4-chlorophenoxy)-2-(trifluoromethyl)phenyl]- (PMN P-17-329, CAS No. 1417782-28-5) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i) through (iv), (a)(3) through (5), (a)(6)(v) and (vi), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include particulate (including solids or liquid droplets).

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (d), (f), (g)(1), (g)(2)(i), (ii), (iv), and (v), (g)(3)(i) and (ii), and (g)(4) and (5). For purposes of § 721.72(g)(1), this substance may cause: Respiratory complications, internal organ effects, reproductive effects; sensitization. For purposes of § 721.72(g)(4), notice to users: Do not release to water at concentrations that exceed 7 parts per billion. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

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

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N=7.

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

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

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

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

§ 721.11272 Vegetable oil, polymer with alkanedioic acid, alkali lignin, diethylene glycol- and polyol-depolymd. poly(ethylene terephthalate) waste plastics and arylcarboxylic acid anhydride (generic).

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

(1) The chemical substance identified generically as vegetable oil, polymer with alkanedioic acid, alkali lignin, diethylene glycol- and polyol-depolymd. poly(ethylene terephthalate) waste plastics and arylcarboxylic acid anhydride (PMN P-17-367) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance with greater than the confidential percentages of low molecular weight components specified in the Order or less than the confidential average molecular weight specified in the Order.

(ii) [Reserved]

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

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

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

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

§ 721.11273 Vegetable oil, polymer with alkanedioic acid, alkali lignin, diethylene glycol- and polyol-depolymd. poly(ethylene terephthalate) waste plastics (generic).

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

(1) The chemical substance identified generically as vegetable oil, polymer with alkanedioic acid, alkali lignin, diethylene glycol- and polyol-depolymd. poly(ethylene terephthalate) waste plastics (PMN P-17-368) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use

the substance with greater than the confidential percentages of low molecular weight components and less than the confidential average molecular weight specified in the Order.

(ii) [Reserved]

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

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

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

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

§ 721.11274 Waste plastics, poly(ethylene terephthalate), depolymd. with diethylene glycol, polymers with alkanedioic acid, alkali lignin and arylcarboxylic acid anhydride (generic).

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

(1) The chemical substance identified generically as waste plastics, poly(ethylene terephthalate), depolymd. with diethylene glycol, polymers with alkanedioic acid, alkali lignin and arylcarboxylic acid anhydride (PMN P-17-369) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance with greater than the confidential percentages of low molecular weight components and less than the confidential average molecular weight specified in the Order.

(ii) [Reserved]

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

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

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

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

§ 721.11275 Waste plastics, poly(ethylene terephthalate), depolymd. with diethylene glycol and polyol, polymers with alkanedioic acid, alkali lignin and arylcarboxylic acid anhydride (generic).

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

(1) The chemical substance identified generically as waste plastics, poly(ethylene terephthalate), depolymd. with diethylene glycol and polyol, polymers with alkanedioic acid, alkali lignin and arylcarboxylic acid anhydride (PMN P-17-370) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance with greater than the confidential percentages of low molecular weight components specified in the Order or less than the confidential average molecular weight specified in the Order.

(ii) [Reserved]

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

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

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

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

§ 721.11276 Vegetable oil, polymer with alkanedioic acid, alkali lignin, diethylene glycol- and polyol-depolymd. poly(ethylene terephthalate) waste plastics and arylcarboxylic acid anhydride (generic).

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

(1) The chemical substance identified generically as vegetable oil, polymer with alkanedioic acid, alkali lignin, diethylene glycol- and polyol-depolymd. poly(ethylene terephthalate) waste plastics and arylcarboxylic acid anhydride (PMN P-17-371) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance with greater than the confidential percentages of low molecular weight components and less

than the confidential average molecular weight specified in the Order.

(ii) [Reserved]

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

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

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

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

§ 721.11277 Vegetable oil, polymer with alkanedioic acid, alkali lignin, diethylene glycol-depolymd. poly(ethylene terephthalate) waste plastics and arylcarboxylic acid anhydride (generic).

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

(1) The chemical substance identified generically as vegetable oil, polymer with alkanedioic acid, alkali lignin, diethylene glycol-depolymd. poly(ethylene terephthalate) waste plastics and arylcarboxylic acid anhydride (PMN P-17-372) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance with greater than the confidential percentages of low molecular weight components specified in the Order or less than the confidential average molecular weight specified in the Order.

(ii) [Reserved]

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

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

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

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

■ 6. Add §§ 721.11279 through 721.11281 to read as follows:

* * * * *

Sec.

721.11279 Substituted propanoic acid, polymer with alkylisocyanate-substituted carbomonocycle, dialkyl carbonate, hydroxyl alkyl substituted alkanediol, alkanediol, isocyanato substituted carbomonocycle, alkanol substituted amines-blocked, compds. with (alkylamino)alkanol (generic).

721.11280 Propanediol phosphate (generic).

721.11281 Substituted cashew, nutshell liquid, polymer with epichlorohydrin, phosphate (generic).

* * * * *

§ 721.11279 Substituted propanoic acid, polymer with alkylisocyanate-substituted carbomonocycle, dialkyl carbonate, hydroxyl alkyl substituted alkanediol, alkanediol, isocyanato substituted carbomonocycle, alkanol substituted amines-blocked, compds. with (alkylamino)alkanol (generic).

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

(1) The chemical substance identified generically as substituted propanoic acid, polymer with alkylisocyanate-substituted carbomonocycle, dialkyl carbonate, hydroxyl alkyl substituted alkanediol, alkanediol, isocyanato substituted carbomonocycle, alkanol substituted amines-blocked, compds. with (alkylamino)alkanol (PMN P-17-394) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f). It is a significant new use to use the substance for any use other than as a coating to improve chemical resistance. It is a significant new use to import the substance with average molecular weight greater than 1,000 daltons, containing greater than 0.1% residual isocyanate by weight, or with greater than 4% of the confidential chemical component specified in the Order.

(ii) [Reserved]

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

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

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

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

§ 721.11280 Propanediol phosphate (generic).

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

(1) The chemical substance identified generically as propanediol phosphate (PMN P-18-23) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been fully reacted (cured).

(2) The significant new uses are:

(i) *Hazard communication.*

Requirements as specified in § 721.72(a) through (d), (f), (g)(1) and (2), (g)(3)(i) and (ii), (g)(4)(iii), and (g)(5). For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; respiratory complications; internal organ effects; eye irritation. For purposes of § 721.72(g)(2), when using this substance: Avoid skin contact; avoid breathing substance; use skin protection; use eye protection; avoid eye contact. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o). It is a significant new use to manufacture, process, or use the substance in any manner that generates a vapor, spray, mist, or aerosol.

(iii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

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

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

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

§ 721.11281 Substituted cashew, nutshell liquid, polymer with epichlorohydrin, phosphate (generic).

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

(1) The chemical substance identified generically as substituted cashew, nutshell liquid, polymer with epichlorohydrin, phosphate (PMN P-18-24) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the

substance after they have been fully reacted (cured).

(2) The significant new uses are:

(i) *Hazard communication.*

Requirements as specified in § 721.72(a) through (d), (f), (g)(1) and (2), (g)(3)(i) and (ii), (g)(4)(iii), and (g)(5). For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; respiratory complications; eye irritation. For purposes of § 721.72(g)(2), when using this substance: Avoid skin contact; avoid breathing substance; use skin protection; use eye protection; avoid eye contact. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o). It is a significant new use to manufacture, process, or use the substance in any manner that generates a vapor, spray, mist, or aerosol.

(iii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

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

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

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

■ 7. Add § 721.11284 to read as follows:

§ 721.11284 Di(substituted-1,3-trialkylammonium) dialkylammonium salt (generic).

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

(1) The chemical substance identified generically as di(substituted-1,3-trialkylammonium) dialkylammonium salt (PMN P-18-88) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been fully reacted (cured).

(2) The significant new uses are:

(i) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f), (g)(1)(ii) through (iv), (g)(2)(i) through (iii) and (v), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may

be used. For purposes of § 721.72(e), the concentration is set at 1.0%.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k). It is a significant new use to manufacture, process, or use the substance in any manner that generates a vapor, mist, particulate, or aerosol.

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N=1000.

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

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

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

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

■ 8. Add § 721.11288 to read as follows:

§ 721.11288 Benzene, 1-(chloromethyl)-3-methyl-

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as benzene, 1-(chloromethyl)-3-methyl- (PMN P-18-134; CAS No. 620-19-9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3) through (5), (a)(6)(v) and (vi), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 1,000. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include particulate and combination gas/vapor and particulate. For purposes of § 721.63(b), the concentration is set at 0.1%.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (v),

(g)(3)(i) and (ii), (g)(4)(iii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 0.1%. For purposes of § 721.72(g)(1), this substance may cause: Respiratory irritation; severe skin burns and eye damage; sensitization (respiratory and dermal); serious eye irritation; respiratory complications; central nervous system effects; reproductive effects; cancer; developmental effects. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, Commercial, and consumer activities.* Requirements as specified in § 721.80(k). It is a significant new use to vary the process or use methods described in the PMN such that occupational exposure is increased.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

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

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

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

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

■ 9. Add § 721.11305 to read as follows:

§ 721.11305 Unsaturated polycyclic hydrocarbon (generic).

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

(1) The chemical substance identified generically as unsaturated polycyclic hydrocarbon (PMN P-17-419) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3) through (5), (a)(6)(v) and (vi), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to

prevent exposure, where feasible. For purposes of 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50. For purposes of 721.63(b), the concentration is set at 1.0%.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i), (ii), (iv) and (v), (g)(3)(i) and (ii), (g)(4)(iii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Skin sensitization; specific target organ toxicity; skin irritation; respiratory complications; reproductive effects; developmental effects. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (t). It is a significant new use to manufacture the substance for more than 9 months.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

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

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

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

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

■ 10. Add § 721.11308 to read as follows:

§ 721.11308 Mixed metal oxide (generic).

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

(1) The chemical substance generically identified as mixed metal oxide (PMN P-18-55) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (3) through (6), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (e.g.,

enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 1,000. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include particulate. For purposes of § 721.63(b), the concentration is set at 0.1%.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA Order for this substance. The NCEL is 0.04 mg/m³ as an 8-hour time weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by the EPA will be required to follow NCELs provisions comparable to those contained in the corresponding TSCA Order.

(B) [Reserved]

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f) and (g)(1), (2), and (5). For purposes of § 721.72(e), the concentration is set at 0.1%. For purposes of § 721.72(g)(1), this substance may cause: Allergic skin reaction; respiratory sensitization; germ cell mutagenicity; respiratory complications; cancer. For purposes of § 721.72(g)(2), when using this substance: Avoid skin contact; avoid breathing substance; avoid ingestion; use skin protection; use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.04 mg/m³. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

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

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

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

(2) *Limitation or revocation of certain notification requirements.* The

provisions of § 721.185 apply to this section.

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

■ 11. Add § 721.11315 to read as follows:

§ 721.11315 Lithium nickel hydride oxide.

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

(1) The chemical substance identified as lithium nickel hydride oxide (PMN P-18-123; CAS No. 2081933-92-6) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (3) through (6), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include particulate.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA Order for this substance. The NCEL is 0.05 mg/m³ as an 8-hour time weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will be required to follow NCELs provisions comparable to those contained in the corresponding TSCA Order.

(B) [Reserved]

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (d), (f), (g)(1)(ii) through (iv) and (vii) through (ix), (g)(2), (g)(3)(ii), (g)(4)(i), and (g)(5). For purposes of § 721.72(g)(2), when using this substance: Avoid skin contact; avoid breathing substance; avoid ingestion; use skin protection; use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.05

mg/m³. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture the substance for more than four years.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N=32.

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

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

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

■ 12. Add § 721.11316 to read as follows:

§ 721.11316 Lithium nickel potassium oxide.

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

(1) The chemical substance identified as lithium nickel potassium oxide (PMN P-18-124, CAS No. 210352-95-7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (3) through (6), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include particulate.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA Order for this substance. The NCEL is 0.05 mg/m³ as an 8-hour time weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may

request to do so under § 721.30. Persons whose § 721.30 requests to use the NCEs approach are approved by EPA will be required to follow NCEs provisions comparable to those contained in the corresponding TSCA Order.

(B) [Reserved]

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (d), (f), (g)(1)(ii) through (iv) and (vii) through (ix), (g)(2), (g)(3)(ii), (g)(4)(i), and (g)(5). For purposes of § 721.72(g)(2), when using this substance: Avoid skin contact; avoid breathing substance; avoid ingestion; use skin protection; use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.05 mg/m³. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture the substance for more than four years.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N=32.

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

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

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

■ 13. Add §§ 721.11319 through 721.11321 to read as follows:
Sec.

* * * * *

721.11319 Waste plastics, poly(ethylene terephthalate), polymers with diethylene glycol, glycerol, polyerythritol, triethylene glycol, trimethylolalkane and polypropylene glycol (generic).

721.11320 Waste plastics, poly(ethylene terephthalate), polymers with diethylene glycol, glycerol, polyerythritol, phthalic anhydride, triethylene glycol, trimethylolalkane and polypropylene glycol (generic).

721.11321 Naphtha oils (generic).

* * * * *

§ 721.11319 Waste plastics, poly(ethylene terephthalate), polymers with diethylene glycol, glycerol, polyerythritol, triethylene glycol, trimethylolalkane and polypropylene glycol (generic).

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

(1) The chemical substance identified generically as waste plastics, poly(ethylene terephthalate), polymers with diethylene glycol, glycerol, polyerythritol, triethylene glycol, trimethylolalkane and polypropylene glycol (PMN P-18-200) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (3) through (6), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 10. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include particulate. For purposes of § 721.63(b), the concentration is set at 1.0%.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f), (g)(1)(iv), (g)(2), (g)(3)(i) and (ii), and (g)(4) and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(2), when using this substance: Avoid skin contact; avoid eye contact; use skin protection; use respiratory protection; use eye protection. For purposes of § 721.72(g)(4), notice to users: Water release restrictions apply. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

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

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N=280.

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

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

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

§ 721.11320 Waste plastics, poly(ethylene terephthalate), polymers with diethylene glycol, glycerol, polyerythritol, phthalic anhydride, triethylene glycol, trimethylolalkane and polypropylene glycol (generic).

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

(1) The chemical substance identified generically as waste plastics, poly(ethylene terephthalate), polymers with diethylene glycol, glycerol, polyerythritol, phthalic anhydride, triethylene glycol, trimethylolalkane and polypropylene glycol (PMN P-18-201) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (3) through (6), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 10. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include particulate. For purposes of § 721.63(b), the concentration is set at 1.0%.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f), (g)(1)(iv), (g)(2), (g)(3)(i) and (ii), and (g)(4) and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(2), when using this substance: Avoid skin contact; avoid eye contact; use skin protection; use respiratory protection; use eye protection. For purposes of § 721.72(g)(4), notice to users: Water release restrictions apply. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

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

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N=280.

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

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

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

§ 721.11321 Naphtha oils (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as naphtha oils (PMN P-18-235) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance incorporated into a gasoline or transportation fuel formulation below the maximum confidential concentration specified in the Order for the substance.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(f) and (k).

(ii) [Reserved].

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

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

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

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

■ 14. Add §§ 721.11346 through 721.11350 to read as follows:

* * * * *

Sec.

721.11346 Perfluoropolyether halide (generic).

721.11347 Perfluoropolyether aryl (generic).

721.11348 Substituted aryl perfluoropolyether (generic).

721.11349 Sulfonated perfluoropolyether aromatic transition metal salt (generic).

721.11350 Sulfonated perfluoropolyether aryl alkali metal salt (generic).

* * * * *

§ 721.11346 Perfluoropolyether halide (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as perfluoropolyether halide (PMN P-16-151) is subject to reporting under this section for the significant

new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication*.

Requirements as specified in § 721.72(a) through (f), (g)(3)(i) and (ii), (g)(4)(i) and (iii), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used. For purposes of § 721.72(e), the concentration is set at 1.0%.

(ii) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(k) and (t). It is a significant new use to manufacture the substance for more than one year.

(iii) *Disposal*. Requirements as specified in § 721.85(a)(1), (b)(1), and (c)(1). Incineration must be hazardous waste high temperature incineration where the treatment efficiency is no less than 99.99%.

(iv) *Release to water*. Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

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

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

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

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

§ 721.11347 Perfluoropolyether aryl (generic).

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

(1) The chemical substance identified generically as perfluoropolyether aryl (PMN P-16-152) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard Communication*.

Requirements as specified in § 721.72(a) through (f), (g)(3)(i) and (ii), (g)(4)(i) and (iii), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used. For purposes of § 721.72(e), the concentration is set at 1.0%.

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

(iii) *Disposal*. Requirements as specified in § 721.85(a)(1), (b)(1), and (c)(1). Incineration must be hazardous waste high temperature incineration where the treatment efficiency is no less than 99.99%.

(iv) *Release to water*. Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

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

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

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

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

§ 721.11348 Substituted aryl perfluoropolyether (generic).

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

(1) The chemical substance identified generically as substituted aryl perfluoropolyether (PMN P-16-153) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication*.

Requirements as specified in § 721.72(a) through (f), (g)(3)(i) and (ii), (g)(4)(i) and (iii), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used. For purposes of § 721.72(e), the concentration is set at 1.0%.

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

(iii) *Disposal*. Requirements as specified in § 721.85(a)(1), (b)(1), and (c)(1). Incineration must be hazardous waste high temperature incineration where the treatment efficiency is no less than 99.99%.

(iv) *Release to water*. Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

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

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

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

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

§ 721.11349 Sulfonated perfluoropolyether aromatic transition metal salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as sulfonated perfluoropolyether aromatic transition metal salt (PMN P-16-154) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f), (g)(3)(i) and (ii), (g)(4)(i) and (iii), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used. For purposes of § 721.72(e), the concentration is set at 1.0%.

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

(iii) *Disposal.* Requirements as specified in § 721.85(a)(1), (b)(1), and (c)(1). Incineration must be hazardous waste high temperature incineration where the treatment efficiency is no less than 99.99%.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

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

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

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

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

§ 721.11350 Sulfonated perfluoropolyether aryl alkali metal salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as sulfonated perfluoropolyether aryl alkali metal salt (PMN P-16-155) is subject to reporting

under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f), (g)(3)(i) and (ii), (g)(4)(i) and (iii), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used. For purposes of § 721.72(e), the concentration is set at 1.0%.

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

(iii) *Disposal.* Requirements as specified in § 721.85(a)(1), (b)(1), and (c)(1). Incineration must be hazardous waste high temperature incineration where the treatment efficiency is no less than 99.99%.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

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

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

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

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

■ 15. Add § 721.11360 to read as follows:

§ 721.11360 Benzenepropanal, .alpha.,.alpha.,3-trimethyl-

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

(1) The chemical substance identified as benzenepropanal, .alpha.,.alpha.,3-trimethyl- (PMN P-18-129; CAS No. 107737-97-3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

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

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are

applicable to manufacturers and processors of this substance.

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

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

■ 16. Add § 721.11361 to read as follows:

§ 721.11361 Multiwalled carbon nanotubes (generic).

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

(1) The chemical substance identified generically as multiwalled carbon nanotubes (PMN P-18-182) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance that have been:

(i) Embedded or incorporated into a polymer matrix that itself has been reacted (cured);

(ii) Embedded in a permanent solid/polymer form that is not intended to undergo further processing, except mechanical processing; or

(iii) Incorporated into an article as defined at 40 CFR 720.3(c).

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (3) through (6), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include particulate.

(ii) *Industrial, commercial, and consumer activities.* It is a significant new use to use an application method that generates a dust, mist, or aerosol, unless such application method occurs in an enclosed process. It is a significant new use to use the substance other than for heat transfer, heat storage, thermal emission, and general temperature management in heat-generating systems such as electronics, to improve mechanical properties or electrical conductivities of other materials or

products, and for light absorption properties.

(iii) *Disposal*. Requirements as specified in § 721.85(a)(1) and (2), (b)(1) and (2), and (c)(1) and (2).

(iv) *Release to water*. Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

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

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

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

■ 17. Add § 721.11372 to read as follows:

§ 721.11372 Phenol-formaldehyde epoxy, polymer with an alkyl polyether polysulfide (generic).

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

(1) The chemical substance identified generically as phenol-formaldehyde epoxy, polymer with an alkyl polyether polysulfide (PMN P-19-5) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace*.

Requirements as specified in § 721.63(a)(1) and (3).

(ii) *Hazard communication*.

Requirements as specified in § 721.72(a) through (d), (f), (g)(1), (g)(2)(i), (ii), and (v), (g)(3)(i) and (ii), and (g)(4) and (5).

For purposes of § 721.72(g)(1), this substance may cause: Internal organ effects; reproductive effects; cancer; skin and respiratory sensitization; germ cell mutagenicity. For purposes of § 721.72(g)(4), notice to users: Water release restrictions apply. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities*. It is a significant new use to manufacture, process, or use the substance in any manner that results in inhalation exposure.

(iv) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N=1.

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in

§ 721.125(a) through (c), (f) through (i), and (k) are applicable to manufacturers and processors of this substance.

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

■ 18. Add § 721.11383 to read as follows:

§ 721.11383 Triarylsulfonium salt (generic).

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

(1) The chemical substance identified generically as triarylsulfonium salt (PMN P-16-548) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to process or use the substance in a manner that generates a vapor, mist, or aerosol.

(ii) *Release to water*. Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

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

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

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

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

■ 19. Add §§ 721.11390 through 721.11393 to read as follows:

* * * * *

Sec.

721.11390 Branched cyclic and linear hydrocarbons from plastic depolymerization (generic).

721.11391 Alkane, alkene, styrenic compounds derived from plastic depolymerization (generic).

721.11392 Carbon compound derived from plastic depolymerization (generic).

721.11393 Branched cyclic and linear hydrocarbons from plastic depolymerization (generic).

* * * * *

§ 721.11390 Branched cyclic and linear hydrocarbons from plastic depolymerization (generic).

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

(1) The chemical substance identified

generically as branched cyclic and linear hydrocarbons from plastic depolymerization (PMN P-17-398) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance that have been refined or blended into other chemical or fuel formulations.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(k). For purposes of § 721.80(k), the use is as a refinery feedstock or a fuel blending additive.

(ii) [Reserved]

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

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

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

§ 721.11391 Alkane, alkene, styrenic compounds derived from plastic depolymerization (generic).

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

(1) The chemical substance identified generically as alkane, alkene, styrenic compounds derived from plastic depolymerization (PMN P-17-399) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance that have been refined or blended into other chemical or fuel formulations.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(k). For purposes of § 721.80(k), the use is as a refinery feedstock or a fuel blending additive.

(ii) [Reserved]

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

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

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

§ 721.11392 Carbon compound derived from plastic depolymerization (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as carbon compound derived from plastic depolymerization (PMN P-18-1) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture the substance containing more than 1% of the particles less than 75 microns. It is a significant new use to manufacture the substance other than by the enclosed process described in the premanufacture notice.

(ii) [Reserved]

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

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

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

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

§ 721.11393 Branched cyclic and linear hydrocarbons from plastic depolymerization (generic).

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

(1) The chemical substance identified generically as branched cyclic and linear hydrocarbons from plastic depolymerization (PMN P-18-28) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance that have been refined or blended into other chemical or fuel formulations.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k). For purposes of § 721.80(k), the use is as a refinery feedstock or a fuel blending additive.

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in

§ 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

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

■ 20. Add § 721.11422 to read as follows:

§ 721.11422 Alkanediamine, dialkyl-, polymer with .alpha.-hydro-omega-[(1-oxo-2-propen-1-yl)oxy]poly(oxy-1,2-ethanediyl) ether with substituted alkyl-substituted alkanediol, reaction products with alkyl-alkanamine (generic).

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

(1) The chemical substance identified generically as alkanediamine, dialkyl-, polymer with .alpha.-hydro-omega-[(1-oxo-2-propen-1-yl)oxy]poly(oxy-1,2-ethanediyl) ether with substituted alkyl-substituted alkanediol, reaction products with alkyl-alkanamine (PMN P-17-393) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the PMN substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(4) through (6) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general, and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 1,000. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include particulate.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA Order for this substance. The NCEL is 0.039 mg/m³ as an 8-hour time-weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will be required to follow NCELs provisions comparable to those

contained in the corresponding TSCA Order.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (d), (f), and (g)(1) through (3) and (5). For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; respiratory complications; eye irritation; skin sensitization. For purposes of § 721.72(g)(2), when using this substance: Avoid skin contact; avoid breathing substance; avoid ingestion; use skin protection; use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.039 mg/m³. For purposes of § 721.72(g)(3), this substance may be: Toxic to aquatic organisms; hazardous to the aquatic environment. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k). It is a significant new use to manufacture the substance with an average molecular weight less than 1,000 daltons and with more than 10% less than 500 daltons.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N=1.

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

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

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

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

■ 21. Add §§ 721.11426 through 721.11443 to read as follows:

* * * * *

Sec.

721.11426 Halogenated sodium benzene alkylcarboxylate (generic) (P-19-86).
721.11427 Halogenated sodium benzene alkylcarboxylate (generic) (P-19-87).
721.11428 Halogenated sodium benzene alkylcarboxylate (generic) (P-19-89).
721.11429 Halogenated sodium benzoate (generic) (P-19-90).
721.11430 Halogenated benzene alkylcarboxylic acid (generic) (P-19-91).
721.11431 Halogenated benzene alkylcarboxylic acid (generic) (P-19-92).
721.11432 Halogenated benzoic acid (generic) (P-19-93).

- 721.11433 Halogenated alkylbenzoic acid, ethyl ester (generic) (P-19-97).
- 721.11434 Halogenated alkylbenzoic acid, ethyl ester (generic) (P-19-100).
- 721.11435 Halogenated alkylbenzoic acid, ethyl ester (generic) (P-19-101).
- 721.11436 Halogenated alkylbenzoic acid, ethyl ester (generic) (P-19-102).
- 721.11437 Halogenated benzoic acid, ethyl ester (generic) (P-19-103).
- 721.11438 Halogenated alkylbenzoic acid, ethyl ester (generic) (P-19-104).
- 721.11439 Halogenated benzoic acid, ethyl ester (generic) (P-19-105).
- 721.11440 Halogenated alkylbenzoic acid, ethyl ester (generic) (P-19-106).
- 721.11441 Halogenated alkylbenzoic acid, ethyl ester (generic) (P-19-107).
- 721.11442 Halogenated alkylbenzoic acid, ethyl ester (generic) (P-19-108).
- 721.11443 Halogenated benzoic acid, ethyl ester (generic) (P-19-110).

* * * * *

§ 721.11426 Halogenated sodium benzene alkylcarboxylate (generic).

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

(1) The chemical substance identified generically as halogenated sodium benzene alkylcarboxylate (PMN P-19-86) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (iii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; respiratory complications; central nervous system effects; internal organ effects; reproductive effects; developmental effects; eye irritation. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (q). It is a significant new use to manufacture, process, or use the substance other than in a liquid formulation. It is a significant new use to manufacture or process the substance without including the engineering controls/processes described in the premanufacture notice.

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

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

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

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

§ 721.11427 Halogenated sodium benzene alkylcarboxylate (generic) (P-19-87).

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

(1) The chemical substance identified generically as halogenated sodium benzene alkylcarboxylate (PMN P-19-87) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (iii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; respiratory complications; central nervous system effects; internal organ effects; reproductive effects; developmental effects; eye irritation. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (q). It is a significant new use to manufacture, process, or use the substance other than in a liquid formulation. It is a significant new use to manufacture or process the substance without including the engineering controls/processes described in the premanufacture notice.

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

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

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

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

§ 721.11428 Halogenated sodium benzene alkylcarboxylate (generic) (P-19-89).

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

(1) The chemical substance identified generically as halogenated sodium benzene alkylcarboxylate (PMN P-19-89) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (iii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; respiratory complications; central nervous system effects; internal organ effects; reproductive effects; developmental effects; eye irritation. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (q). It is a significant new use to manufacture, process, or use the substance other than in a liquid formulation. It is a significant new use to manufacture or process the substance without including the engineering controls/processes described in the premanufacture notice.

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

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

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

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

§ 721.11429 Halogenated sodium benzoate (generic) (P-19-90).

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

(1) The chemical substance identified generically as halogenated sodium benzoate (PMN P-19-90) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (iii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this

substance may cause: Skin irritation; respiratory complications; central nervous system effects; internal organ effects; reproductive effects; developmental effects; eye irritation. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (q). It is a significant new use to manufacture, process, or use the substance other than in a liquid formulation. It is a significant new use to manufacture or process the substance without including the engineering controls/processes described in the premanufacture notice.

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

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

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

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

§ 721.11430 Halogenated benzene alkylcarboxylic acid (generic) (P-19-91).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as halogenated benzene alkylcarboxylic acid (PMN P-19-91) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (iii), and (iv), (a)(3) through (6), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) as described in the TSCA Order for this substance. For purposes of

§ 721.63(a)(6), the airborne form(s) of the substance include particulate, gas/vapor, and combination gas/vapor and particulate. For purposes of § 721.63(b), the concentration is set at 1.0%.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA Order for this substance. The NCEL is 0.0273 mg/m³ as an 8-hour time weighted average. Persons who wish to pursue NCELS as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELS approach are approved by EPA will be required to follow NCELS provisions comparable to those contained in the corresponding TSCA Order.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f) and (g)(1), (2), and (5). For purposes of § 721.72(e) concentration set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; respiratory complications; central nervous system effects; internal organ effects; reproductive effects; developmental effects; eye irritation. For purposes of § 721.72(g)(2), when using this substance: Avoid skin contact; avoid breathing substance; avoid ingestion; use skin protection; use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.0273 mg/m³. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k), (q), and (t). It is a significant new use to manufacture or process the substance without including the engineering controls/processes described in the premanufacture notice.

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

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

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

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

§ 721.11431 Halogenated benzene alkylcarboxylic acid (generic) (P-19-92).

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

(1) The chemical substance identified generically as halogenated benzene alkylcarboxylic acid (PMN P-19-92) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (iii), and (iv), (a)(3) through (6), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) as described in the TSCA Order for this substance. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include particulate, gas/vapor, and combination gas/vapor and particulate. For purposes of § 721.63(b), the concentration is set at 1.0%.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA Order for this substance. The NCEL is 0.0273 mg/m³ as an 8-hour time weighted average. Persons who wish to pursue NCELS as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELS approach are approved by EPA will be required to follow NCELS provisions comparable to those contained in the corresponding TSCA Order.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f) and (g)(1), (2), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; respiratory complications; central nervous system effects; internal organ effects; reproductive effects; developmental effects; eye irritation. For purposes of § 721.72(g)(2), when using this substance: Avoid skin contact; avoid breathing substance; avoid ingestion; use skin protection; use respiratory protection or maintain

workplace airborne concentrations at or below an 8-hour time-weighted average of 0.0273 mg/m³. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k), (q), and (t). It is a significant new use to manufacture or process the substance without including the engineering controls/processes described in the premanufacture notice.

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

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

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

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

§ 721.11432 Halogenated benzoic acid (generic) (P-19-93).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as halogenated benzoic acid (PMN P-19-93) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i), (iii), and (iv), (a)(3) through (6), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) as described in the TSCA Order for the substance. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include particulate, gas/vapor, and combination gas/vapor and particulate.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of

this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA Order for this substance. The NCEL is 0.0273 mg/m³ as an 8-hour time weighted average. Persons who

wish to pursue NCELS as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELS approach are approved by EPA will be required to follow NCELS provisions comparable to those contained in the corresponding TSCA Order.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f) and (g)(1), (2), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; respiratory complications; central nervous system effects; internal organ effects; reproductive effects; developmental effects; eye irritation. For purposes of § 721.72(g)(2), when using this substance: Avoid skin contact; avoid breathing substance; avoid ingestion; use skin protection; use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.0273 mg/m³. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k), (q), and (t). It is a significant new use to manufacture or process the substance without including the engineering controls/processes described in the premanufacture notice.

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

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

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

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

§ 721.11433 Halogenated alkylbenzoic acid, ethyl ester (generic) (P-19-97).

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

(1) The chemical substance identified generically as halogenated alkylbenzoic

acid, ethyl ester (PMN P-19-97) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (iii), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; respiratory complications; central nervous system effects; internal organ effects; reproductive effects; developmental effects; eye irritation. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (q). It is a significant new use to manufacture or process the substance without including the engineering controls/processes described in the premanufacture notice.

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N=14.

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

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

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

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

§ 721.11434 Halogenated alkylbenzoic acid, ethyl ester (generic) (P-19-100).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as halogenated alkylbenzoic acid, ethyl ester (PMN P-19-100) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (iii), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; respiratory complications; central nervous system effects; internal

organ effects; reproductive effects; developmental effects; eye irritation. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (q). It is a significant new use to manufacture or process the substance without including the engineering controls/processes described in the premanufacture notice.

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N=14.

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

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

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

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

§ 721.11435 Halogenated alkylbenzoic acid, ethyl ester (generic) (P-19-101).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as halogenated alkylbenzoic acid, ethyl ester (PMN P-19-101) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (iii), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; respiratory complications; central nervous system effects; internal organ effects; reproductive effects; developmental effects; eye irritation. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (q). It is a significant new use to manufacture or process the substance without including the engineering controls/processes described in the premanufacture notice.

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N=14.

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

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

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

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

§ 721.11436 Halogenated alkylbenzoic acid, ethyl ester (generic) (P-19-102).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as halogenated alkylbenzoic acid, ethyl ester (PMN P-19-102) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (iii), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; respiratory complications; central nervous system effects; internal organ effects; reproductive effects; developmental effects; eye irritation. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (q). It is a significant new use to manufacture or process the substance without including the engineering controls/processes described in the premanufacture notice.

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N=14.

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

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

(2) *Limitation or revocation of certain notification requirements.* The

provisions of § 721.185 apply to this section.

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

§ 721.11437 Halogenated benzoic acid, ethyl ester (generic) (P-19-103).

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

(1) The chemical substance identified generically as halogenated benzoic acid, ethyl ester (PMN P-19-103) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (iii), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e) concentration set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; respiratory complications; central nervous system effects; internal organ effects; reproductive effects; developmental effects; eye irritation. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (q). It is a significant new use to manufacture or process the substance without including the engineering controls/processes described in the premanufacture notice.

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N=14.

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

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

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

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

§ 721.11438 Halogenated alkylbenzoic acid, ethyl ester (generic) (P-19-104).

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

(1) The chemical substance identified generically as halogenated alkylbenzoic acid, ethyl ester (PMN P-19-104) is

subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (iii), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; respiratory complications; central nervous system effects; internal organ effects; reproductive effects; developmental effects; eye irritation. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (q). It is a significant new use to manufacture or process the substance without including the engineering controls/processes described in the premanufacture notice.

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N=14.

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

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

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

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

§ 721.11439 Halogenated benzoic acid, ethyl ester (generic) (P-19-105).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as halogenated benzoic acid, ethyl ester (PMN P-19-105) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (iii), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; respiratory complications; central nervous system effects; internal organ effects; reproductive effects;

developmental effects; eye irritation. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (q). It is a significant new use to manufacture or process the substance without including the engineering controls/processes described in the premanufacture notice.

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N=14.

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

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

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

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

§ 721.11440 Halogenated alkylbenzoic acid, ethyl ester (generic) (P-19-106).

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

(1) The chemical substance identified generically as halogenated alkylbenzoic acid, ethyl ester (PMN P-19-106) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i), (ii), and (iii), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; respiratory complications; central nervous system effects; internal organ effects; reproductive effects; developmental effects; eye irritation. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (q). It is a significant new use to manufacture or process the substance without including the engineering controls/processes described in the premanufacture notice.

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N=14.

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

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

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

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

§ 721.11441 Halogenated alkylbenzoic acid, ethyl ester (generic) (P-19-107).

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

(1) The chemical substance identified generically as halogenated alkylbenzoic acid, ethyl ester (PMN P-19-107) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (iii), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; respiratory complications; central nervous system effects; internal organ effects; reproductive effects; developmental effects; eye irritation. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (q). It is a significant new use to manufacture or process the substance without including the engineering controls/processes described in the premanufacture notice.

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N=14.

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

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

(2) *Limitation or revocation of certain notification requirements.* The

provisions of § 721.185 apply to this section.

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

§ 721.11442 Halogenated alkylbenzoic acid, ethyl ester (generic) (P–19–108).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as halogenated alkylbenzoic acid, ethyl ester (PMN P–19–108) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (iii), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; respiratory complications; central nervous system effects; internal organ effects; reproductive effects; developmental effects; eye irritation. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (q). It is a significant new use to manufacture or process the substance without including the engineering controls/processes described in the premanufacture notice.

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N=14.

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

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

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

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

§ 721.11443 Halogenated benzoic acid, ethyl ester (generic) (P–19–110).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as halogenated benzoic acid, ethyl ester (PMN P–19–110) is subject to

reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (iii), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; respiratory complications; central nervous system effects; internal organ effects; reproductive effects; developmental effects; eye irritation. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (q). It is a significant new use to manufacture or process the substance without including the engineering controls/processes described in the premanufacture notice.

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N=14.

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

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

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

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

[FR Doc. 2021–17392 Filed 8–17–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2020–0118; FRL–8653–01–OCSPF]

Fluensulfone; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerance for residues of fluensulfone in or on soybean, seed. Makhteshim Agan of North America (d/b/a ADAMA) requested these tolerances under the

Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective August 18, 2021. Objections and requests for hearings must be received on or before October 18, 2021, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2020–0118, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805.

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Marietta Echeverria, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: RDFRNotices@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Publishing Office's e-CFR site at http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2020-0118 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before October 18, 2021. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2020-0118, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

- **Mail:** OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave., NW, Washington, DC 20460-0001.

- **Hand Delivery:** To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of April 15, 2020 (85 FR 20910) (FRL-10006-54), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petition (PP 9F8799) by Makhteshim Agan of North America (d/b/a ADAMA), 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604. The petition requested that 40 CFR 180.680 be amended by establishing tolerances for residues of the nematicide fluensulfone, in or on soybean, seed at 0.1 parts per million (ppm); soybean, forage at 7.0 ppm; and soybean, hay at 20 ppm. That document referenced a summary of the petition prepared by Makhteshim Agan of North America, the petitioner, which is available in the docket, <http://www.regulations.gov>. Two comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA is establishing a tolerance that varies from what is requested. The reason for these changes is explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue"

Consistent with FFDCA section 408(b)(2)(D), and the factors specified therein, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for fluensulfone, including exposure resulting from the tolerance established by this action.

EPA's assessment of exposures and risks associated with fluensulfone follows.

In an effort to streamline **Federal Register** publications, EPA is not reprinting here summaries of its analyses that have previously appeared in the **Federal Register** in previous tolerance rulemakings for the same pesticide. To that end, this rulemaking refers the reader to several sections from the April 13, 2018 tolerance rulemaking for residues of fluensulfone that remain unchanged for an understanding of the Agency's rationale in support of this rulemaking. See 83 FR 15971 (FRL-9975-76). Those sections are: Units III.A (Toxicological Profile); III.B. (Toxicological Points of Departure/Levels of Concern); and III.C. (Exposure Assessment), except as explained in the next paragraphs; III.D. (Safety Factor for Infants and Children).

Exposure assessment updates. EPA's exposure assessments have been updated to include the additional exposure from use of fluensulfone on soybeans. EPA's aggregate exposure assessment incorporated this additional dietary exposure, as well as exposure from drinking water and from residential sources. The new use does not result in an increase in the estimated residue levels in drinking water or in exposure from residential sources relative to those used in the last assessment.

Further information about EPA's risk assessment and determination of safety supporting the new fluensulfone tolerance can be found at <http://www.regulations.gov> in the document titled "Fluensulfone. Human Health Risk Assessment for a New Use on Soybean." in docket ID EPA-HQ-OPP-2020-0118.

Assessment of aggregate risks. EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate points of departure (PODs) to ensure that an adequate margin of exposure (MOE) exists. For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure.

Acute dietary risks are below the Agency's level of concern: The acute dietary risk estimate is 21% of the aPAD for infants (<1 year old), the group with the highest exposure. Chronic dietary risks are below the Agency's level of concern: 4.8% of the cPAD for infants (<1 year old), the group with the highest

exposure. EPA has concluded the combined short-term food, water, and residential exposures result in aggregate margins of exposure above the level of concern of 100 for all scenarios assessed and are not of concern. EPA has determined that quantification of cancer risk using a non-linear approach (*i.e.*, reference dose) will adequately account for all chronic toxicity, including carcinogenicity, that could result from exposure to fluensulfone; the chronic aggregate assessment did not result in risk estimates of concern.

Determination of safety. Therefore, based on the risk assessments and information described above, EPA concludes there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to fluensulfone residues. More detailed information on this action to establish a tolerance on soybean can be found in the document entitled, "Fluensulfone. Human Health Risk Assessment for a new use on Soybean" by going to the docket established by this action, which is described under **ADDRESSES**.

IV. Other Considerations

A. Analytical Enforcement Methodology

There are adequate residue analytical methods for enforcing tolerances for fluensulfone residues of concern in/on the registered plant and livestock commodities. These methods include two high-performance liquid chromatography methods with tandem mass-spectroscopy detection (HPLC/MS/MS) for determining residues in/on plant and livestock matrices.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; email address: residuemethods@epa.gov.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for fluensulfone on soybean.

C. Response to Comments

EPA received two comments from anonymous sources. One comment cited concern regarding fluoride; this comment is not relevant to the Agency's evaluation of a tolerance for the proposed new use of fluensulfone on soybean. The other comment expresses concern about pesticides in general, and requests that the Agency deny use of fluensulfone without specifically mentioning the new use on soybean. While the agency recognizes that some people do not like pesticides, the Agency has evaluated the aggregate risk of fluensulfone and has determined that there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to fluensulfone residues.

D. Revisions to Petitioned-For Tolerances

The agency has determined that tolerances are not needed for soybean, forage and soybean, hay, as the label contains a feeding restriction for those commodities, and the commodities will not be in the channels of trade. Further, the agency has recommended amending the proposed tolerance for soybean, seed from 0.1 ppm to 0.07 ppm based upon the OECD MRL/Tolerance Calculation Procedures.

V. Conclusion

Therefore, a tolerance is established for residues of fluensulfone on soybean, seed at 0.07 ppm.

VI. Statutory and Executive Order Reviews

This action establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled

"Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule 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**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 6, 2021.

Marietta Echeverria,
Acting Director, Registration Division, Office of Pesticide Programs.

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

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.680, amend the table 1 to § 180.680 by adding in alphabetical order in paragraph (a) the entry “Soybean, seed” to read as follows:

§ 180.680 Fluensulfone; tolerances for residues.

(a) * * *

TABLE 1 TO § 180.680

Commodity	Parts per million
* * * * *	*
Soybean, seed	0.07
* * * * *	*

* * * * *

[FR Doc. 2021-17682 Filed 8-17-21; 8:45 am]

BILLING CODE 6560-50-P

Proposed Rules

Federal Register

Vol. 86, No. 157

Wednesday, August 18, 2021

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2020-1069; Project Identifier 2018-CE-039-AD]

RIN 2120-AA64

Airworthiness Directives; Daher Aerospace (Type Certificate Previously Held by SOCATA) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Daher Aerospace (type certificate previously held by SOCATA) Model TBM 700 airplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The unsafe condition that is the subject of the MCAI is ice accumulation on the oil cooler air inlet duct fin. This proposed AD would require modifying the oil cooler air induction duct. 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 October 4, 2021.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* (202) 493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12 140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5

p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Daher Aerospace, 601 NE 10 Street, Pompano Beach, FL 33060; phone: +1 (954) 366-3331; email: TBMCare@daher.com; website: <https://www.daher.com/en/aircraft-manufacturer/customer-service/>. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329-4148.

Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2020-1069; 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 MCAI, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Greg Johnson, Aviation Safety Engineer, FAA, General Aviation & Rotorcraft Section, International Validation Branch, 901 Locust, Room 301, Kansas City, MO 64106; phone: (720) 626-5462; fax: (816) 329-4090; email: greg.johnson@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 the **ADDRESSES** section. Include "Docket No. FAA-2020-1069; Project Identifier 2018-CE-039-AD" at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to <https://www.regulations.gov>, including any personal information you provide. The

agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Greg Johnson, Aviation Safety Engineer, FAA, General Aviation & Rotorcraft Section, International Validation Branch, 901 Locust, Room 301, Kansas City, MO 64106. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018-0133, dated June 22, 2018, and corrected June 25, 2018 (referred to after this as "the MCAI"), to address the unsafe condition on certain Daher Aerospace (type certificate previously held by SOCATA) Model TBM 700 airplanes. The MCAI states:

During flight testing in icing conditions, oil temperature increase was observed. Subsequent investigation determined that the loss of efficiency of the oil cooler system was due to ice accumulation on the engine air induction duct fins.

This condition, if not corrected, could lead to uncommanded engine in-flight shut-down and reduced control of the aeroplane.

To address this potential unsafe condition, DAHER AEROSPACE developed MOD 70-0616-79 for aeroplanes in production, removing the 4 upper fins of the oil cooler air induction duct to avoid ice accumulation, available for in-service aeroplanes through the SB [Daher Aerospace Service Bulletin 70-254 79, dated April 18, 2018].

For the reasons described above, this [EASA] AD requires modification of the oil cooler air induction duct.

You may examine the MCAI in the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2020–1069.

Although the unsafe condition statement in the MCAI identifies the cause as ice accumulation on the engine air induction fin, the FAA has determined that this does not accurately identify the affected air path. The affected area is the oil cooler air inlet duct fin.

Related Service Information Under 14 CFR Part 51

The FAA reviewed Daher Aerospace Service Bulletin SB 70–254, dated April 2018. The service information specifies procedures for removing the four upper fins of the oil cooler air induction duct and for re-identifying the oil cooler air induction duct with a new part number. 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**.

Other Related Service Information

The FAA also reviewed Daher Aerospace Service Bulletin SB 70–231, Revision 1, dated July 2018; and Daher Aerospace Service Bulletin SB 70–219, Revision 2, dated July 2018. The service information identifies the kit number and installation procedures for replacing the oil cooler air induction duct.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information referenced above. The FAA is issuing this NPRM after determining the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This AD requires accomplishing the actions specified in the service information already described.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect up to 807 products of U.S. registry. The FAA

also estimates that it would take about 3 work-hours per product to comply with the requirements of this proposed AD. The average labor rate is \$85 per work-hour. Required parts would cost about \$50 per product.

Based on these figures, the FAA estimates the total cost of the proposed AD on U.S. operators to be up to \$246,135 at \$305 per product.

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:

Daher Aerospace (Type Certificate

Previously Held by SOCATA); Docket No. FAA–2020–1069; Project Identifier 2018–CE–039–AD.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by October 4, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Daher Aerospace (type certificate previously held by SOCATA) Model TBM 700 airplanes, all serial numbers, certificated in any category, with an oil cooler air induction duct part number (P/N) T700A7920040001, T700H792000900000, T700H792001900000, T700H792001900200, T700H792001900400, or T700H792001900600 installed.

Note 1 to paragraph (c) of this AD: The applicable oil cooler air induction duct P/Ns may be installed in accordance with modification 70–0435–79; Daher Aerospace Service Bulletin SB 70–231, Revision 1, dated July 2018; or Daher Aerospace Service Bulletin SB 70–219, Revision 2, dated July 18, 2018.

(d) Subject

Joint Aircraft System Component (JASC) Code 7900, Engine Oil System (Airframe).

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The unsafe condition that is the subject of the MCAI is ice accumulation on the oil cooler air inlet duct fin. The FAA is issuing this AD to prevent ice from accumulating on the oil cooler air induction duct fins, which could lead to an increase in oil temperature, uncommanded engine inflight shutdown, and reduced airplane control.

(f) Compliance

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

(g) Modify the Oil Cooler Air Induction Duct

(1) Within 3 months after the effective date of this AD, remove the four upper fins of the oil cooler air induction duct and re-identify the oil cooler air induction duct in accordance with the Description of Accomplishment Instructions in Daher Aerospace Service Bulletin SB 70–254, dated April 2018.

(2) As of the effective date of this AD, do not install an oil cooler air induction duct P/N T700A7920040001, T700H792000900000, T700H792001900000, T700H792001900200, T700H792001900400, or T700H792001900600 on any airplane.

(h) Alternative Methods of Compliance (AMOCs)

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

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

(i) Related Information

(1) For more information about this AD, contact Greg Johnson, Aviation Safety Engineer, FAA, General Aviation & Rotorcraft Section, International Validation Branch, 901 Locust, Room 301, Kansas City, MO 64106; phone: (720) 626-5462; fax: (816) 329-4090; email: greg.johnson@faa.gov.

(2) Refer to European Aviation Safety Agency (EASA) AD 2018-0133, dated June 22, 2018, and corrected June 25, 2018, for more information. You may examine the EASA AD in the AD docket at <https://www.regulations.gov> by searching for and locating it in Docket No. FAA-2020-1069.

(3) For service information identified in this AD, contact Daher Aerospace, 601 NE 10 Street, Pompano Beach, FL 33060; phone: +1 (954) 366-3331; email: TBMCare@daher.com. You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329-4148.

Issued on August 4, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021-17603 Filed 8-17-21; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2021-0671; Project Identifier 2019-SW-036-AD]

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 adopt a new airworthiness directive (AD) for certain Leonardo S.p.a. Model AB139 and AW139 helicopters. This proposed AD was prompted by a report of damage (burns) on the tail rotor blades (TRBs). This proposed AD would require an inspection of each TRB for the general condition and any evidence of burns and replacement if necessary, 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 October 4, 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 EASA material that is proposed for IBR in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: ADs@easa.europa.eu; internet: www.easa.europa.eu. You may find the EASA 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. This EASA material is also available at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0671.

Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0671; 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: Jacob Fitch, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; phone: (817) 222-4130; email: jacob.fitch@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-2021-0671; Project Identifier 2019-SW-036-AD" at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to <https://www.regulations.gov>, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Jacob Fitch, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; phone: (817) 222-4130; email: jacob.fitch@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 EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0073, dated March 28, 2019 (EASA AD 2019–0073), to correct an unsafe condition for Leonardo S.p.a. Model AB139 and AW139 helicopters.

This proposed AD was prompted by a report of damage (burns) on the TRBs. The FAA is proposing this AD to address damage (burns) on the TRBs, which could result in the loss of a TRB, and possible reduced control of the helicopter. See EASA AD 2019–0073 for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2019–0073 requires an inspection of each TRB for the general condition and any evidence of burns and replacement if necessary. 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 in EASA AD 2019–0073, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed AD.

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 2019–0073 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2019–0073 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 2019–0073 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 2019–0073. Service information required by EASA AD 2019–0073 for compliance will be available at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2021–0671 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 138 helicopters of U.S. Registry. Labor rates are estimated at \$85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
3 work-hours × \$85 per hour = \$255 (4 blades)	\$0	\$255	\$35,190

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
2 work-hours × \$85 per hour = \$170 per blade	\$57,500 per blade	\$57,670 per blade.

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

Authority for This Rulemaking

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

detail the scope of the Agency’s authority.

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

develop on products identified in this rulemaking action.

Regulatory Findings

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–2021–0671; Project Identifier 2019–SW–036–AD.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by October 4, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Leonardo S.p.a. Model AB139 and AW139 helicopters, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2019–0073, dated March 28, 2019 (EASA AD 2019–0073).

(d) Subject

Joint Aircraft Service Component (JASC) Codes: 3097, Ice/Rain Protection System Wiring; 6410, Tail Rotor Blades.

(e) Unsafe Condition

This AD was prompted by a report of damage (burns) on the tail rotor blades (TRBs). The FAA is issuing this AD to address damage (burns) on the TRBs. The unsafe condition, if not addressed, could result in loss of a TRB, possibly resulting in reduced 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, EASA AD 2019–0073.

(h) Exceptions to EASA AD 2019–0073

(1) Where EASA AD 2019–0073 requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(2) Where EASA AD 2019–0073 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where the service information required by EASA AD 2019–0073 specifies returning a part to the manufacturer, this AD does not include that requirement.

(4) This AD does not require the “Remarks” section of EASA AD 2019–0073.

(5) Where paragraph (2) of EASA AD 2019–0073 specifies to replace if there are burn signs or other damage, for this AD, other damage is defined as being consistent with wire overheating (e.g., possible melted or exposed wires).

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2019–0073 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Special Flight Permit

Special flight permits, as described in 14 CFR 21.197 and 21.199, are not allowed.

(k) 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 (l)(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.

(l) Related Information

(1) For EASA AD 2019–0073, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +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–2021–0671.

(2) For more information about this AD, contact Jacob Fitch, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, FAA, 10101 Hillwood Pkwy.,

Fort Worth, TX 76177; phone: (817) 222–4130; email: jacob.fitch@faa.gov.

Issued on August 11, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–17608 Filed 8–17–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0667; Project Identifier MCAI–2021–00580–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus SAS Model A350–941 and –1041 airplanes. This proposed AD was prompted by a report that during type certification activity, it was identified that certain monitoring software was incorrectly implemented in the braking control system (BCS) certification standard. This proposed AD would require installing (updating) certain software for the braking and steering system, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by October 4, 2021.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202–493–2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For material that will be incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221

8999 000; email ADs@easa.europa.eu; internet www.easa.europa.eu. You may find this IBR material on the EASA website at <https://ad.easa.europa.eu>. You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0667.

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-2021-0667; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206-231-3225; email dan.rodina@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-2021-0667; Project Identifier MCAI-2021-00580-T" at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to <https://www.regulations.gov>, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this proposed AD.

Confidential Business Information

CBI is commercial or financial information that is both customarily and

actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206-231-3225; email dan.rodina@faa.gov. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021-0127, dated May 12, 2021 (EASA AD 2021-0127) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain Airbus SAS Model A350-941 and -1041 airplanes.

This proposed AD was prompted by a report that during type certification activity, it was identified that certain monitoring software was incorrectly implemented in the BCS certification standard. The FAA is proposing this AD to address in-service limitations related to the braking and steering system, which, under specific degraded conditions, could lead to a reduction in braking performance and potentially lead to a runway excursion, and result in damage to the airplane and injury to passengers. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2021-0127 describes procedures for installing (updating) serviceable software for the braking and steering system. Serviceable software includes BCS software (SW) standard (STD) S5B, wheel steering control system (WSCS) SW STD S5B, and landing gear extension and retraction system (LGER) SW STD S5A. This material is reasonably available because the interested parties have access to it through their normal course of business

or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2021-0127 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA 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 2021-0127 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021-0127 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 2021-0127 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 2021-0127. Service information required by EASA AD 2021-0127 for compliance will be available at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0667 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 17 airplanes of U.S. registry.

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

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 4 work-hours × \$85 per hour = Up to \$340	Up to \$1,650	Up to \$1,990	Up to \$33,830.

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

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2021–0667; Project Identifier MCAI–2021–00580–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by October 4, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2021–0127, dated May 12, 2021 (EASA AD 2021–0127).

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Reason

This AD was prompted by a report that during type certification activity, it was identified that certain monitoring software was incorrectly implemented in the braking control system (BCS) certification standard. The FAA is issuing this AD to address in-service limitations related to the braking and steering system, which, under specific degraded conditions, could lead to a reduction in braking performance and potentially lead to a runway excursion, and result in damage to the airplane and injury to passengers.

(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, EASA AD 2021–0127.

(h) Exceptions to EASA AD 2021–0127

- (1) Where EASA AD 2021–0127 refers to its effective date, this AD requires using the effective date of this AD.
- (2) The “Remarks” section of EASA AD 2021–0127 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)(2) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(3) *Required for Compliance (RC):* Except as required by paragraph (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

(1) For information about EASA AD 2021-0127 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>. 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-2021-0667.

(2) For more information about this AD, contact Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206-231-3225; email dan.rodina@faa.gov.

Issued on August 7, 2021.

Gaetano A. Sciortino,

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

[FR Doc. 2021-17196 Filed 8-17-21; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2021-0564; Project Identifier AD-2020-01350-T]

RIN 2120-AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all The Boeing Company Model MD-11 and MD-11F airplanes. This proposed AD was prompted by reports indicating incidents of wires chafing against the inboard upper corner of the observer station circuit breaker panel. This proposed AD would require, depending on airplane configuration, doing a general visual inspection of the right observer station upper main circuit breaker panel and wiring for certain missing parts; doing an inspection of the right observer station upper main circuit breaker panel to determine if a certain bracket part number is installed; doing

a general visual inspection of certain wire assemblies for any damage; modifying the observer station upper main circuit breaker panel; and applicable on-condition actions. 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 October 4, 2021.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110-SK57, Seal Beach, CA 90740-5600; telephone 562-797-1717; internet <https://www.myboeingfleet.com>. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0564.

Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0564; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Eric Igama, Aerospace Engineer, Systems and Equipment Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712-4137; phone: 562-627-5388; fax: 562-627-5210; email: Roderick.Igama@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-2021-0564; Project Identifier AD-2020-01350-T” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to <https://www.regulations.gov>, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this 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, 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 Eric Igama, Aerospace Engineer, Systems and Equipment Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712-4137; phone: 562-627-5388; fax: 562-627-5210; email: Roderick.Igama@faa.gov. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received reports indicating incidents of wires chafing against the inboard upper corner of the observer station circuit breaker panel. It has been determined that this condition allows for the chafed electrical wires to arc against the metal panel during the opening and closing of the panel. This condition, if not addressed, could result in wire chafing and arcing on the panel,

which could cause damage to equipment, and result in loss of electrical power and a possible in-flight fire.

FAA’s Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Service Bulletin MD11–24A204, Revision 2, dated April 14, 2021. For certain airplanes, this service information describes procedures for doing a general visual inspection of the right observer station upper main circuit breaker panel and wiring for missing installation of sleeving, grommets, and spacers; doing an inspection of the right observer station upper main circuit

breaker panel to determine if bracket part number SR11240046–11 is installed; and applicable on-condition actions. On-condition actions include repairing or replacing damaged wires, installing sleeves and routing wires, trimming and re-identifying the bracket, and replacing any missing grommets or spacers.

For certain other airplanes, this service information describes procedures for doing a general visual inspection of wire assemblies ABS9110 and ABS9115 for any damage (*i.e.*, wire chafing, arcing), modifying the observer station upper main circuit breaker panel, and applicable on-condition actions. On-condition actions include repairing or replacing damaged wires.

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**.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions identified as “RC” (required for compliance) in the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–24A204, Revision 2, dated April 14, 2021, already described, except for any differences identified as exceptions in the regulatory text of this proposed AD. For information on the procedures and compliance times, see this service information at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2021–0564.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 118 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections	Up to 17 work-hours × \$85 per hour = Up to \$1,445 ...	\$0	Up to \$1,445	Up to \$170,510.

The FAA estimates the following costs to do any necessary actions that

would be required based on the results of the proposed inspection. The FAA

has no way of determining the number of aircraft that might need these actions:

ON-CONDITION COSTS *

Action	Labor cost	Parts cost	Cost per product
Replacement, installation and trimming	Up to 3 work-hours × \$85 per hour = Up to \$255	\$428	Up to \$683.

* The FAA has received no definitive data on which to base the cost estimates for the on-condition repairs specified in this proposed AD.

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

Authority for This Rulemaking

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

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

procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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.

(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:

The Boeing Company: Docket No. FAA–2021–0564; Project Identifier AD–2020–01350–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by October 4, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model MD–11 and MD–11F airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 24, Electrical power.

(e) Unsafe Condition

This AD was prompted by reports indicating incidents of wires chafing against the inboard upper corner of the observer station circuit breaker panel. The FAA is issuing this AD to address wire chafing and arcing on the panel, which could cause damage to equipment, and result in loss of electrical power and a possible in-flight fire.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraph (h) of this AD: At the applicable times specified in paragraph 1.E., “Compliance,” of Boeing Alert Service Bulletin MD11–24A204, Revision 2, dated April 14, 2021, do all applicable actions identified as “RC” (required for compliance) in, and in accordance with, the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–24A204, Revision 2, dated April 14, 2021.

(h) Exception to Service Information Specifications

Where Boeing Alert Service Bulletin MD11–24A204, Revision 2, dated April 14, 2021, uses the phrase “the Revision 2 date of this service bulletin,” this AD requires using “the effective date of this AD.”

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles 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 Related Information. Information may be emailed to: 9-ANM-LAACO-AMOC-Requests@faa.gov.

(2) Before using any approved AMOC, notify your appropriate principal inspector,

or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (i)(4)(i) and (ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled “RC Exempt,” then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled 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 RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(j) Related Information

(1) For more information about this AD, contact Eric Igama, Aerospace Engineer, Systems and Equipment Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5388; fax: 562–627–5210; email: Roderick.Igama@faa.gov.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet <https://www.myboeingfleet.com>. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on July 9, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–17362 Filed 8–17–21; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA–R10–OAR–2019–0574, FRL–8814–01–R10]

Approval and Promulgation of Air Quality Implementation Plans; Washington; Low Emission Vehicle Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Washington State Implementation Plan (SIP) pertaining to adoption by reference of a Low Emission Vehicle (LEV) program by the State of Washington. The Clean Air Act (CAA) grants authority to the EPA to adopt federal standards relating to the control of emissions from new motor vehicles, and generally preempts states from doing so. However, the CAA provides California the ability to adopt and enforce its own new motor vehicle emission standards, as long as the EPA approves California’s standards via a preemption waiver. The CAA also allows other states to adopt California’s new motor vehicle emission standards for which the EPA has granted such a waiver providing other relevant criteria are met. Washington adopted California’s LEV emission standards in 2005, effective with new vehicles sold in model year 2009. Washington subsequently amended its new motor vehicle emissions program to incorporate California’s LEV updates to its program. The purpose of this SIP revision is to implement programs to reduce vehicle emissions that contribute to formation of ground level ozone and fine particulate matter. Washington did not submit provisions related to greenhouse gas emissions from new motor vehicles or zero-emission vehicles requirements for inclusion in the SIP. The EPA is proposing to approve Washington’s LEV SIP revision, as it relates to criteria pollutants, in accordance with the requirements of the CAA.

DATES: Comments must be received on or before September 17, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2019–0574 at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not

submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, EPA Region 10, 1200 Sixth Avenue—Suite 155, Seattle, WA 98101, at (206) 553–0256, or hunt.jeff@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, it is intended to refer to the EPA.

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I. Background

A. What action is the EPA proposing?

The EPA is proposing to approve a SIP revision submitted by Washington on September 30, 2019 requesting inclusion of the state’s adopted and implemented California LEV standards as part of the Washington SIP. None of Washington’s LEV rules are currently in the SIP. Under section 177 of the CAA, states with plan provisions approved under CAA part D (such attainment or maintenance plans for ozone and particulate matter described below) and other criteria in section 177 are met, may adopt California’s standards in lieu of otherwise applicable federal new motor vehicle emission standards.

Washington’s LEV rules are applicable to subject, new motor vehicles sold or titled in Washington beginning with model year 2009. Subject vehicles include passenger cars, light duty trucks, and medium duty passenger vehicles.¹ Washington first adopted California LEV standards as state regulation, Chapter 173–423 Washington Administrative Code (WAC), in 2005 effective with the sale and titling of new vehicles beginning in model year 2009. Washington did not submit a request to the EPA to incorporate the program as a SIP revision at the time. However, to strengthen the SIP particularly with respect to ozone control, Washington formally submitted the state’s LEV program regulations to the EPA on September 30, 2019 for approval and inclusion in the SIP. Further detail on Washington’s LEV program is provided in section I.E. of this preamble. We are proposing to approve Washington’s SIP revision because it will update the SIP with the current Washington LEV rules, and because such LEV rules satisfy the criteria under section 177 of the CAA.

B. Washington’s Air Quality With Respect to the Federal National Ambient Air Quality Standards for Ozone and Fine Particulate Matter

1. Washington Ozone Attainment Status

The CAA, as amended in 1990, requires the EPA to set National Ambient Air Quality Standards (NAAQS) for ambient air pollutants considered harmful to public health and the environment. The EPA establishes NAAQS for six principal air pollutants, or “criteria” pollutants, which include: Ozone, carbon monoxide, lead, nitrogen dioxide, particulate matter, and sulfur dioxide (SO₂). The CAA establishes two types of NAAQS. Primary standards provide public health protection, including protecting the health of sensitive populations such as asthmatics, children, and the elderly. Secondary standards protect public welfare, including protection against decreased visibility and damage to animals, crops, vegetation, and buildings. The CAA also requires the EPA to periodically review the standards to ensure that they provide adequate health and environmental protection, and to update those standards as necessary.

¹ Effective June 11, 2020, the Washington State Legislature modified the LEV program to include all medium duty vehicles beginning with model year 2025 and adopted California’s zero emission vehicle standards. See Revised Code of Washington 70A.30.010. However, these recent statutory changes are not part of the 2019 rule package submitted for approval at this time.

Ozone is formed in the atmosphere by photochemical reactions between ozone precursor pollutants, including volatile organic compounds (VOCs) and nitrogen oxides (NO_x) in the presence of sunlight. In order to reduce ozone concentrations in the ambient air, the CAA directs areas designated as nonattainment to apply controls on VOC and NO_x emission sources to reduce the formation of ozone.

On November 6, 1991 (56 FR 56694), the EPA designated the Portland-Vancouver area and the Seattle-Tacoma area as marginal nonattainment under the 1979 1-hour ozone NAAQS. For the 1-hour ozone NAAQS, attainment is defined when the expected number of days per calendar year, with maximum hourly average concentration greater than 0.12 parts per million (ppm) is equal to or less than 1. The EPA approved the state’s CAA section 175A maintenance plan for the Portland-Vancouver area and redesignated the area to attainment on May 19, 1997 (62 FR 27204). Similarly, the EPA approved the state’s CAA section 175A maintenance plan for the Seattle-Tacoma area and redesignated the area to attainment on September 26, 1996 (61 FR 50438). The EPA later revoked the 1-hour ozone NAAQS effective June 15, 2005 (70 FR 44470).

The EPA did not designate any nonattainment areas in Washington for subsequent updates to the ozone NAAQS, specifically designations for the 1997 8-hour ozone NAAQS (84 FR 23857, April 30, 2004), the 2008 revision to the 8-hour ozone NAAQS (77 FR 30088, May 21, 2012), and the 2015 revision to the 8-hour ozone NAAQS (82 FR 54232, November 16, 2017). While there were no new ozone nonattainment areas designated in the state, Washington generally adopts pro-active measures to prevent nonattainment.

2. Washington Fine Particulate Matter Attainment Status

Fine particulate matter (PM_{2.5}) can be emitted directly or formed secondarily in the atmosphere. The main precursors of secondary PM_{2.5} are SO₂, NO_x, ammonia, and VOCs. Sulfates are a type of secondary particle formed from SO₂ emissions of power plants and industrial facilities. Nitrates, another common type of secondary particle, are formed from NO_x emissions of power plants, automobiles, and other combustion sources.

On July 18, 1997, the EPA promulgated the first air quality standards for PM_{2.5} (62 FR 38652). The EPA promulgated primary and secondary annual standards at a level of 15 micrograms per cubic meter (µg/m³),

based on a 3-year average of annual mean PM_{2.5} concentrations. In the same rulemaking, EPA promulgated primary and secondary 24-hour standards of 65 µg/m³, based on a 3-year average of the 98th percentile of 24-hour concentrations. All areas in Washington met the 1997 PM_{2.5} standards, with all counties classified as unclassifiable/attainment.

On October 17, 2006 (71 FR 61144), the EPA revised the PM_{2.5} NAAQS, retaining the annual average NAAQS at 15 µg/m³ but revising the 24-hour NAAQS to 35 µg/m³. On November 13, 2009 (74 FR 58688), the EPA designated the Tacoma area as nonattainment for the 24-hour PM_{2.5} NAAQS. On February 10, 2015 (80 FR 7347), the EPA approved the CAA section 175A maintenance plan for the Tacoma area and redesignated the area to attainment. Attainment was achieved primarily through wood stove emission reduction measures. However, projected declines in mobile source precursor emissions from ongoing vehicle fleet turnover also played a role in demonstrating continued attainment of the NAAQS.

Lastly, on January 15, 2013, the EPA promulgated a revised primary annual PM_{2.5} NAAQS (78 FR 3086), strengthening the standard from 15 µg/m³ to 12 µg/m³. Nonattainment area designations for the 2012 primary annual PM_{2.5} standard were published on January 15, 2015 (80 FR 2206), with all counties in Washington classified as unclassifiable/attainment.

C. Federal Motor Vehicle Emission Standards

To reduce air pollution from motor vehicles, which contribute to higher levels of ambient air pollution such as ozone and PM_{2.5}, motor vehicles sold in the United States are required by the CAA to be certified to meet federal motor vehicle emission standards. States are generally prohibited from adopting vehicle standards, except for California, which was granted an exception by the CAA to continue to issue its own vehicle emission standards. Section 209 of the CAA requires that, among other criteria for a waiver of preemption, California must demonstrate to the EPA that its newly adopted standards will be in the aggregate, at least as protective of public health and welfare as applicable federal standards.

The CAA also authorizes other states to adopt California emission standards for which the EPA has granted California such a waiver of preemption. Under section 177 of the CAA, states with CAA part D attainment or maintenance plans are authorized to

adopt California's standards in lieu of federal vehicle standards, provided they do so with at least two model years lead time prior to the effective date of the standards, and provided that the EPA has issued a waiver of preemption to California for such standards.

D. California LEV Program

In 1990, California's Air Resources Board (CARB) adopted LEV standards applicable to light and medium duty vehicles and phased in beginning with model year 1994 vehicles. In 1999, California adopted a second generation of LEV standards, known as LEV II, which were phased in beginning model year 2004. The EPA waived federal preemption for California's LEV II program on April 22, 2003 (68 FR 19811).

In 2012, California approved a new, more stringent LEV program called the Advanced Clean Cars Program, or the LEV III program. California codified the LEV III requirements for criteria pollutant control in Title 13 of the California Code of Regulations, Division 3, section 1961.2. The program was phased in beginning with vehicles certified in model year 2015 and applied to light duty vehicles, light duty trucks, and medium duty passenger vehicles. On June 9, 2013 (78 FR 2112), the EPA granted a federal preemption waiver for California's Advanced Clean Cars Program.²

E. Washington LEV Program

In 2005, the Washington Legislature first adopted California's LEV program under Revised Code of Washington (RCW) 70A.30.010. Washington's adoption in 2005 applied to passenger cars, light duty trucks, and medium duty passenger vehicles, excluding other medium duty vehicles and California's ZEV requirements.³ The legislature directed the Washington Department of Ecology (Ecology) to develop regulations implementing the adoption of California's LEV program, which Ecology codified in Chapter 173–423 Washington Administrative Code (WAC). Chapter 173–423 WAC became effective December 31, 2005 and applied

² We note that California's LEV III requirements for greenhouse gas exhaust emission standards codified in sections 1961.1 and 1961.3 were not submitted for approval as part of Washington's adoption by reference of the California LEV rules, nor were provisions related to zero emission vehicles (ZEV).

³ Effective June 11, 2020, the Washington State Legislature modified the LEV program to include all medium duty vehicles beginning with model year 2025 and adopted California's zero emission vehicle standards. However, these recent statutory changes are not part of the 2019 rule package submitted for approval at this time.

to all 2009 and subsequent model years.⁴ However, Washington did not submit the 2005 version of its LEV program regulations as a SIP revision request to EPA at that time. Ecology subsequently amended its LEV program regulations to incorporate by reference updates to the applicable California's LEV program requirements codified in California Code of Regulations Title 13, Division 3.⁵

II. Summary of the September 2019 Washington LEV SIP Revision

On September 30, 2019, Washington submitted a SIP revision requesting that the EPA amend the SIP to incorporate the state LEV requirements under Chapter 173–423 WAC. Washington's LEV program includes California's LEV III standards for criteria pollutant control, which Ecology first incorporated by reference on November 28, 2012, effective December 29, 2012.⁶ Under section 177 of the CAA, states with CAA Part D attainment or maintenance plans, such as Washington, may adopt California's standards in lieu of federal vehicle standards, provided they do so with at least two model years lead time prior to the effective date of the standards, and provided that the EPA has issued a waiver of preemption to California for such standards. As noted above, Washington adopted the California LEV standards in 2005 applying to model year 2009 vehicles, meeting the two-year lead time requirement under section 177 of the CAA. As discussed above, the California LEV II standards adopted by Washington in 2005 had already received an EPA federal preemption waiver in 2003. Therefore, Washington met all CAA section 177 requirements for initial adoption of the California LEV standards. Subsequent updates, such as adoption of California's LEV III, which also received a federal preemption waiver, also met the two-model year lead time requirement. Since the adoption of California's LEV III program in 2012, there have been no major changes to Washington's LEV program for criteria pollutants; however, Ecology has periodically updated the incorporation by reference in Chapter 173–423 WAC to maintain consistency with the California motor vehicle emission standards.

Washington submitted, and the EPA is proposing to approve and incorporate by reference into the SIP, Chapter 173–

⁴ See Washington State Register (WSR) 05–24–044 included in the docket for this action.

⁵ See WSR 09–03–077, 12–24–033, 16–12–099, and 19–02–056 included in the docket.

⁶ See WSR 12–24–033 included in the docket.

423 *Low Emission Vehicles* with one important caveat. Washington did not submit provisions related to California’s greenhouse gas motor vehicle emission standards.⁷ A strikeout version of Chapter 173–423 WAC with the greenhouse gas provisions excluded from our proposed approval is included in the docket for this action.⁸ These exclusions are also noted in the table of regulations proposed for approval in section III. of this preamble. Lastly, as discussed in section I.E. of this preamble, Chapter 173–423 WAC does

not include California’s zero emission vehicle requirements.⁹

III. The EPA’s Proposed Action

As previously noted, under section 177 of the CAA, states with CAA part D attainment or maintenance plans, such as Washington, are authorized to adopt California’s standards in lieu of federal vehicle standards. Washington first adopted the California standards effective December 31, 2005; however, the state did not submit the LEV rules for approval in the SIP at the time. In

2019, Washington submitted the LEV rules to strengthen the SIP with respect to ozone control statewide, including current maintenance areas.¹⁰ We are proposing to approve Washington’s request because it meets the requirements of section 177 of the CAA. Specifically, the EPA is proposing to approve and incorporate by reference into the Washington SIP at 40 CFR 52.2470(c), *Table 1—Regulations Approved Statewide*, the regulations listed in the table below.

WASHINGTON ADMINISTRATIVE CODE, CHAPTER 173–423—LOW EMISSION VEHICLES

State citation	Title/subject	State effective date	Explanation
173–423–010	Purpose	12/29/12	Except 173–423–040(3). Except 173–423–050(2)(g).
173–423–020	Applicability	12/31/05	
173–423–025	Effective Date	12/31/05	
173–423–030	Incorporation by Reference	12/31/05	
173–423–040	Definitions and Abbreviations	12/29/12	
173–423–050	Requirement to Meet California Vehicle Emission Standards.	12/29/12	
173–423–060	Exemptions	12/29/12	
173–423–070	Emission Standards, Warranty, Recall and Other California Provisions Adopted by Reference.	1/27/19	
173–423–080	Fleet Average Nonmethane Organic Gas (NMOG) and NMOG Plus NO _x Exhaust Emission Requirements, Reporting and Compliance..	12/29/12	
173–423–100	Manufacturer Delivery Reporting Requirements ..	12/29/12	
173–423–110	Warranty Requirements	12/29/12	Except the incorporation by reference of California code sections 1961.1 and 1961.3.
173–423–120	Recalls	12/29/12	
173–423–130	Surveillance	12/31/05	
173–423–140	Enforcement	12/31/05	
173–423–150	Severability	12/31/05	

IV. Incorporation by Reference

In this document, the EPA is proposing to include in a final rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the regulations shown in section III of this preamble. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a

SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed 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 proposed 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);

⁷ See *National Ambient Air Quality Standards: Infrastructure State Implementation Plan for 2015 Ozone and 2010 Sulfur Dioxide*, Appendix B.

⁸ See 301_proposed IBR_Chapter 173–423 WAC_strike through.pdf.

⁹ On May 10, 2021, Ecology announced intent to start rulemaking to revise Chapter 173–423 WAC to include zero emission vehicles for passenger cars, light duty trucks, and medium duty vehicles; zero emission vehicles for medium and heavy duty

trucks (Advanced Clean Trucks); and low emission vehicle requirements for medium duty vehicles.

¹⁰ See 102_state submittal_2018 ISIP for 2015 03 and 2010 S02 NAAQS included in the docket for this action.

- 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 the requirements would be inconsistent with the Clean Air Act; and

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

The SIP is not approved to apply on any Indian reservation land in Washington except as specifically noted below and is also not approved to apply in any other area where the EPA or an

Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Washington's SIP is approved to apply on non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the *Puyallup Tribe of Indians Settlement Act of 1989*, 25 U.S.C. 1773, Congress explicitly provided state and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area. Consistent with EPA policy, the

EPA provided a consultation opportunity to the Puyallup Tribe, and other tribes located in Washington, in a letter dated July 15, 2019.

List of Subjects in 40 CFR Part 52

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

Dated: August 12, 2021.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

[FR Doc. 2021-17734 Filed 8-17-21; 8:45 am]

BILLING CODE 6560-50-P

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2018–0078]

Decision To Revise the Requirements for the Importation of Fresh Citrus Fruit From Australia Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to revise the requirements for the importation of citrus from Australia in order to authorize the importation into the continental United States of citrus from additional areas of production. Based on the findings of a pest risk analysis, which we made available to the public for review and comment through a previous notice, we have determined that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of citrus from these additional authorized areas of production in Australia.

DATES: The articles covered by this notification may be authorized for importation under the revised requirements beginning August 18, 2021.

FOR FURTHER INFORMATION CONTACT: Mr. Tony Román, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1231; (301) 851–2242.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in “Subpart L—Fruits and Vegetables” (7 CFR 319.56–1 through 319.56–12, referred to below as the regulations), the Animal and

Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56–4 of the regulations provides the requirements for authorizing the importation of fruits and vegetables into the United States, and it revises existing requirements for the importation of fruits and vegetables. Paragraph (c) of that section provides that the name and origin of all fruits and vegetables authorized importation into the United States, as well as their importation requirements, are listed on the internet in APHIS’ Fruits and Vegetables Import Requirements database, or FAVIR (<https://epermits.aphis.usda.gov/manual>). It also provides that, if the Administrator of APHIS determines that any of the phytosanitary measures required for the importation of a particular fruit or vegetable are no longer necessary to reasonably mitigate the plant risk posed by the fruit or vegetable, APHIS will publish a notice in the **Federal Register** making its pest risk documentation and determination available for public comment.

In accordance with that process, we published a notice¹ in the **Federal Register** on December 17, 2020 (85 FR 81869–81871, Docket No. APHIS–2018–0078), in which we announced the availability, for review and comment, of a pest risk analysis that evaluated the risks associated with the importation into the United States of citrus from three additional areas of Australia: The inland region of Queensland, the regions that compose Western Australia, and the shires of Bourke and Narromine within New South Wales District. The pest risk analysis consisted of a pest risk assessment (PRA) identifying pests of quarantine significance that could follow the pathway of importation of citrus from these regions of Australia into the United States and a commodity import evaluation document (CIED), a type of risk management document, that identified phytosanitary measures to be applied to that commodity to mitigate the pest risk. The national plant

protection organization (NPPO) of Australia also asked us to reevaluate whether *Epiphyas postvittana* (light brown apple moth, also known as LBAM) could follow the pathway of citrus fruit from Australia into the United States. Currently, consignments of citrus fruit imported from Australia must be accompanied by a phytosanitary certificate with an additional declaration stating that the fruit in the consignment was subject to phytosanitary measures to ensure the consignment is free of LBAM. As a result of this reevaluation, we found that LBAM does not follow the pathway of citrus fruit from Australia into the United States, and we announced our intention to remove the additional declaration requirement. This change would affect both the currently authorized importations of citrus fruit from Australia and the importations from the additional production areas authorized by this notice.

We solicited comments on the notice for 60 days ending February 16, 2021. We received seven comments by that date. They were from producers, exporters, researchers, and representatives of State and foreign governments. Three of the commenters supported authorizing citrus imports from the additional regions of Australia as described in the notice and supporting documents. One commenter supported authorizing these imports with some revisions to the PRA. Two commenters opposed authorizing these imports. The commenters also raised a number of questions and concerns about the pest risk assessment and the conditions under which citrus could be imported from these additional regions in Australia.

Pest Risk Assessment

The PRA and CIED that we prepared in response to the Government of Australia’s request evaluated the pest risk associated with the importation of citrus fruit from the inland region of Queensland, the regions that compose Western Australia, and the shires of Bourke and Narromine within New South Wales District into the continental United States. However, in our previous notice we mistakenly did not specify that the PRA and CIED only evaluated the risk to the continental United States. In this notice we are clarifying that permits for importation of

¹ To view the notice, the PRA, CIED, and the comments we received, go to www.regulations.gov. Enter APHIS–2018–0078 in the Search field.

citrus fruit from the inland region of Queensland, the regions that compose Western Australia, and the shires of Bourke and Narromine within New South Wales District will be issued only for ports in the continental United States.

Currently, citrus fruit from the Riverina, Riverland, and Sunraysia areas of Australia is allowed importation into all ports of the United States. This action will allow importation from three additional production areas of Australia to the continental United States, but will not affect currently authorized imports of citrus fruit from Australia except that the phytosanitary certificate will no longer require an additional declaration stating that the consignment is free of light brown apple moth (*Epiphyas postvittana*, also known as LBAM).

The scope of the initial request was for specific additional production areas of the inland region of Queensland, the regions that compose Western Australia, and the shires of Bourke and Narromine within New South Wales; however, the Government of Australia stated that they consider that these production areas were intended to represent production and pest status across the broader jurisdictions and that the risk profiles associated with access granted at the broader whole-state levels of Queensland, Western Australia and New South Wales would not be appreciably greater than those associated with the specifically identified areas. As explained in greater detail below, this notice is limited to the scope of the initial request.

The regulations in 7 CFR 319.5 provide the process for submitting a request for a revision to importation requirements for plants or plant products. Based on the scope of the request submitted by the NPPO of Australia in accordance with this process, APHIS prepared the PRA that we made available with the initial notice. The areas covered by the PRA were not considered to be illustrative or representative of a broader jurisdiction but were rather the specific areas requested by the NPPO itself. Moreover, we disagree that adjacent areas within a region can be presumed to have an equivalent pest profile to the regions evaluated by the PRA; in our experience, risk profiles can vary considerably within a geographical area. For these reasons, APHIS cannot expand the scope of the areas of Australia allowed to export citrus to the United States without first revising the PRA to include the expanded area Australia proposes, and publishing a new notice

with the revised PRA in the **Federal Register** for public comment.

One commenter stated that the PRA did not assess the risk of the pink hibiscus mealybug (*Maconellicoccus hirsutus* (Green)). The commenter noted this pest is present in parts of the United States but is currently not found in Arizona. The commenter further stated that pink hibiscus mealybug is found in Australia and may be found in the regions where additional citrus imports into the United States may be approved. The commenter stated that the PRA should indicate whether the pink hibiscus mealybug is a pest of concern in the Australian regions under consideration for export and its risk of introduction evaluated.

APHIS agrees with the commenter that pink hibiscus mealybug should be included in the pest list for citrus from Australia and has revised the PRA accordingly.² The pink hibiscus mealybug has already been introduced into the United States, however, and there is no eradication or control program for it in areas of the United States in which it is established. We have determined the overall likelihood of pink hibiscus mealybug following citrus fruit imports into the continental United States to be negligible. These changes do not affect the overall conclusions of the analysis and the Administrator's determination of risk.

Phytosanitary Measures

Two commenters expressed concern that the phytosanitary measures discussed in the CIED may not adequately prevent the introduction of Oriental red mite (*Eutetranychus orientalis*), brown citrus rust mite (*Tegolophus australis*), Lebbeck mealybug (*Nipaecoccus viridis*), and Kelly's citrus thrips (*Pezothrips kellyanus*) and stated that the risk of introducing these pests is not negligible.

As we concluded in the PRA, the overall likelihood of introduction of brown citrus rust mite, Oriental red mite, Lebbeck mealybug, and Kelly's citrus thrips is negligible. Occurrence of these pests is infrequent in the export area. Furthermore, as outlined in the PRA, growers in Australia employ integrated pest management and cultural practices that further reduce the prevalence of these pests on the harvested commodity. This is also supported by the absence or low numbers of interceptions of these four pests of concern on citrus fruit from Australia at ports of entry. The control of mites is achieved by close monitoring

during spring and autumn, encouragement of natural enemies, and the use of selective miticides. Mealybug and thrips populations are closely monitored from early spring and may be controlled through the release and promotion of natural enemies. The well-timed use of oil sprays is also highly effective.

We also note that Lebbeck mealybug was added to the list of pests no longer regulated at U.S. ports of entry for the continental United States and Hawaii on September 8, 2020. To re-categorize pests so they no longer require action at ports of entry, APHIS submits a proposal to the National Plant Board (NPB), an organization composed of plant regulatory officials for State departments of agriculture. In this proposal to NPB, we propose to change the regulatory status of certain insects and plant diseases and provide our rationale for why they should no longer be considered of quarantine significance. The NPB reviews each proposal and must concur with the recommendation to change the pest's regulatory status. The NPB concurred with our proposal to deregulate Lebbeck mealybug and accordingly we added it to the list of pests no longer regulated. The list of pests no longer regulated can be viewed on the APHIS website at <https://www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/frsmp/frsmp-non-reg-pests>. We have revised the PRA to remove this pest from the list of pests associated with citrus from Australia.

One commenter noted that APHIS proposed removing the additional declaration requirement that ensures the consignment is free of LBAM. The commenter stated that the PRA notes that LBAM population pressure is sometimes high in Australia, however, and larvae suspected to be LBAM have been intercepted from Australia on permit cargo of citrus. Despite removal of this declaration making import requirements consistent with APHIS domestic requirements for LBAM, the commenter expressed concern that removal of this declaration requirement at the international level may lead to the pest escaping detection during routine production, post-harvest, and packing practices.

As we explained in the CIED, the current host list for APHIS domestic pest management for LBAM exempts conventionally produced citrus from LBAM quarantined areas from any

² See footnote 1 for directions on how to view the updated PRA.

specific mitigations.³ The host list states that this is because LBAM survival on citrus is low compared with non-citrus hosts. The PRA also found that there was low larval survival on oranges, that oranges are a suboptimal host, that fruit fall prematurely if infested, and that damage symptoms are easily seen and culled. For these reasons we concluded that under normal population conditions and strict adherence to good harvest and packing procedures, LBAM is unlikely to follow the pathway of commercial fruit.

The combination of low field prevalence and packing procedures make it highly unlikely that a foundation LBAM population could be moved out of the registered place of production after conventional production and harvesting practices. The CIED determined that these considerations are also applicable to citrus fruit from Australia, and thus merit removal of the additional declaration requirement for LBAM. Furthermore, interception data from 1984 to 2018 shows only one interception of LBAM in citrus fruit from Australia, and 90 interceptions of Tortricidae (the next highest taxa) in citrus fruit from Australia. The most recent interceptions were in 2005. In the event of Tortricidae interceptions in citrus fruit from Australia, APHIS can require additional mitigations for LBAM. We are making no changes in response to this comment.

Pest Free Areas

One commenter stated that the option of allowing citrus fruit to originate from an area that is free of Queensland fruit fly (*Bactrocera tryoni*), Mediterranean fruit fly (*Ceratitis capitata*, also known as Medfly), and/or Lesser Queensland fruit fly (*Bactrocera neohumeralis*) may be problematic. The commenter expressed concern that this could allow fruit to enter an area evaluated in the PRA which may have been deemed a pest free area (PFA) for only one of the listed fruit flies. The commenter further stated that the approved production area should certify that all three fruit flies are not present at time of export or be subject to the most appropriate cold treatment schedule.

We agree that if an area is not a pest free area for all three species of fruit flies, citrus must be subject to phytosanitary treatment for the relevant species of fruit fly, and this is the

mitigation structure that we proposed in the CIED with regard to pest free areas.

Treatments

Two commenters noted that the treatment evaluation document assessed the effectiveness of schedules T107-d-2 and T107-d-3 on Lesser Queensland fruit fly and concluded that they would provide sufficient control. One of the commenters stated that this conclusion was based on a small-scale, comparative study of the relative cold tolerances of eggs and early instar larvae of Queensland fruit fly, Lesser Queensland fruit fly, and Jarvis' fruit fly (*Bactrocera jarvisi*) in mandarin. The commenter stated that additional larger-scale studies on alternative citrus hosts should be conducted to provide more significant findings which could further (or diminish) support of the addition of Lesser Queensland fruit fly to T107-d-2 and T107-d-3.

The other commenter raised the same point but added that without scientific evidence confirming the referred efficacy, T107-d-2 and T107-d-3 must not be accepted as a phytosanitary treatment for Lesser Queensland fruit fly.

Jarvis' fruit fly and Lesser Queensland fruit fly both have narrow coastal distributions in Northeastern Australia. Jarvis' fruit fly is also found in the tropical area of Northern Australia. Both species only inhabit areas that are subtropical and tropical in climate. This supports the Australian research that these species are not more cold-tolerant than Queensland fruit fly. Citrus is also not the preferred host of either fruit fly.

In contrast, the mandarin fruit that the Australian scientists used to test cold tolerance for Lesser Queensland fruit fly is an optimal host and would be the preferred host to test cold tolerance of this species. The small-scale comparative study conducted by the Australian Department of Agriculture and Water Resources to determine the relative cold tolerance of Queensland fruit fly, Lesser Queensland fruit fly, and Jarvis' fruit fly supplemented the large scale studies that supported our recommendations to approve the T107-d-2 and T107-d-3 treatment schedules. We note that small-scale comparative studies of this kind compare two points or a small number of points to see if they are significantly different. In the case of the fruit fly study, they were not. We are making no changes in response to these comments.

The Government of Australia requested the addition of several treatment options for fruit flies. These treatments are already in the USDA Treatment Manual. Specifically, they

requested adding T107-a-1, T107-a-2, and T107-a-3, which are approved for use as stand-alone cold disinfestation against Medfly for citrus fruit. They also requested adding schedule T105 at a dose of 100Gy for fruit flies, as listed in table 5-2-2 in the USDA Treatment Manual.⁴

These additional treatments, which appear in the USDA Treatment Manual, may be used for citrus fruit that originates in an area where the only fruit flies present are those for which these treatments are approved. We note that the schedule T105 treatment is approved at a dose of 100Gy for Jarvis fruit fly, Lesser Queensland fruit fly, and Medfly. There is an option for a dose of 150Gy for all other fruit flies in the family *Tephritidae* not listed in table 5-2-2. Guidelines for the approval of additional treatments can be found in 7 CFR 305.3.

The Government of Australia further stated that standard commercial production practices implemented by the Australian citrus industry, such as disease management strategies used to control citrus black spot disease (CBS) in the field and packinghouses in Australia and complemented by phytosanitary inspection, would appropriately manage the risks posed by the fungus. The Government of Australia noted that over the history of inspection of citrus exports from these production areas, CBS has not been a problem, and stated that Australia considers that any additional import requirements would exceed reasonable requirements to manage the risk.

The phytosanitary measures we proposed to address the risk of CBS in citrus fruit from Australia are the same measures we require of domestic producers to ship citrus interstate within the United States. We are making no changes in response to this comment.

Therefore, in accordance with the regulations in § 319.56-4(c)(2)(ii), we are announcing our decision to authorize the importation into the continental United States of *Citrus sinensis* (L.) Osbeck (orange), *C. limonia* Osbeck (Rangpur), *C. meyeri* Yu. Tanaka (lemon), *C. aurantiifolia* (Christm.) Swingle (Key lime), *C. latifolia* (Yu. Tanaka) Tanaka (lime), *C. paradisi* Macfad. (grapefruit), *C. reticulata* Blanco (mandarin), and their hybrids from three additional areas of Australia (the inland region of Queensland, the regions that compose Western Australia, and the shires of Bourke and Narromine

³ The host list can be viewed on the APHIS website at https://www.aphis.usda.gov/plant_health/plant_pest_info/lba_moth/downloads/exempted_host_list.pdf.

⁴ The USDA Treatment Manual can be viewed on the APHIS website at https://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf.

within New South Wales District), subject to the following phytosanitary measures:

- The citrus must either originate from an area within these approved production areas that is free of the fruit flies Queensland fruit fly, Medfly, and/or *Bactrocera neohumeralis* (Lesser Queensland fruit fly), or be treated with cold treatment or other approved treatment for the relevant fruit flies.
- If the area has Queensland fruit fly or Lesser Queensland fruit fly, cold treatment schedules T107-d-2 or T107-d-3 must be used.

• The citrus fruit must be accompanied by a phytosanitary certificate issued by the NPPO of Australia that attests that citrus fruit were produced in a fruit fly pest-free area or that indicates that cold treatment was applied to the consignment during transit to the continental United States, or a combination of PFAs and quarantine treatments; were inspected by the NPPO of Australia and found free of pests of concern. We are not requiring an additional declaration for light brown apple moth because the PRA considers this pest unlikely to follow the pathway on citrus fruit from these areas.

• The citrus fruit is subject to inspection at the port of entry into the United States.

• Only commercial consignments of Australian citrus fruit may be imported into the United States.

• Fruit must be washed, brushed, surface disinfected in accordance with 7 CFR part 305 and according to treatment schedules listed in the USDA Treatment Manual, treated with fungicide at labeled rates, and waxed at packinghouses.

• An operational work plan that details the requirements under which citrus will be safely imported is in place.

• The citrus fruit must be imported under permit.

These revised conditions will be listed in the FAVIR database (available at <https://epermits.aphis.usda.gov/manual>). In addition to these specific measures, citrus from Australia will be subject to the general requirements listed in § 319.56-3 that are applicable to the importation of all fruits and vegetables.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the burden requirements associated with this action are included under the Office of Management and Budget control number 0579-0049.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance 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. For information pertinent to E-Government Act compliance related to this notice, please contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851-2483.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this action as not a major rule, as defined by 5 U.S.C. 804(2).

Authority: 7 U.S.C. 1633, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 12th day of August 2021.

Mark Davidson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2021-17709 Filed 8-17-21; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B-29-2021]

Foreign-Trade Zone (FTZ) 107—Des Moines, Iowa; Authorization of Production Activity; Lely North America, Inc. (Automated Milking and Feeding Equipment); Pella, Iowa

On April 14, 2021, Lely North America, Inc. (Lely) submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 107E, in Pella, Iowa.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (86 FR 21686, April 23, 2021). On August 12, 2021, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: August 12, 2021.

Andrew McGilvray,
Executive Secretary.

[FR Doc. 2021-17691 Filed 8-17-21; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B-58-2021]

Foreign-Trade Zone (FTZ) 43—Battle Creek, Michigan; Notification of Proposed Production Activity; Pfizer, Inc. (mRNA COVID-19 Vaccine); Kalamazoo, Michigan

Pfizer, Inc. (Pfizer) submitted a notification of proposed production activity to the FTZ Board for its facilities in Kalamazoo, Michigan. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on August 6, 2021.

Pfizer already has authority to produce pharmaceutical, consumer healthcare and animal healthcare products within Subzone 43E. The current request would add a finished product and a foreign-status material/component to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status material/component and specific finished product described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Pfizer from customs duty payments on the foreign-status material/component used in export production. On its domestic sales, for the foreign-status material/component noted below and in the existing scope of authority, Pfizer would be able to choose the duty rate during customs entry procedures that applies to the mRNA COVID-19 vaccine (duty-free). Pfizer would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The proposed foreign-status material/component is mRNA bulk drug substance (duty rate—6.5%). The company currently intends to ship mRNA bulk drug substance produced at its facility in Andover, Massachusetts (Subzone 27R) to its Kalamazoo facilities for further processing.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: ftz@trade.gov. The closing period for their receipt is September 27, 2021.

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

For further information, contact Diane Finver at Diane.Finver@trade.gov.

Dated: August 12, 2021.

Andrew McGilvray,
Executive Secretary.

[FR Doc. 2021-17692 Filed 8-17-21; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B-31-2021]

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

On April 14, 2021, the Port of Portland, grantee of FTZ 45, submitted a notification of proposed production activity to the FTZ Board on behalf of Lam Research Corporation, within Subzone 45H, in Tualatin and Sherwood, Oregon.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (86 FR 22387-22389, April 28, 2021). On August 12, 2021, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: August 12, 2021.

Andrew McGilvray,
Executive Secretary.

[FR Doc. 2021-17689 Filed 8-17-21; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-106]

Wooden Cabinets and Vanities and Components Thereof From the People's Republic of China: Preliminary Rescission of Antidumping Duty New Shipper Review; 2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that Dalian Hualing Wood Co., Ltd. (Hualing) does not qualify as a new shipper and we are preliminarily

rescinding this new shipper review (NSR). We invite interested parties to comment on this preliminary rescission.

DATES: Applicable August 18, 2021.

FOR FURTHER INFORMATION CONTACT: Jacob Keller, AD/CVD Operations Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-4849.

SUPPLEMENTARY INFORMATION:

Background

On April 21, 2020, we published in the **Federal Register** an antidumping duty order on wooden cabinets and vanities and components thereof (cabinets) from the People's Republic of China (China).¹ On December 1, 2020, Commerce initiated the antidumping duty NSR of wooden cabinets from China for the period of review, April 1, 2020, through September 30, 2020, for Hualing.² For additional background, see the Preliminary Decision Memorandum.³

Scope of the Order

The products covered by the *Order* are wooden cabinets and vanities that are for permanent installation (including floor mounted, wall mounted, ceiling hung or by attachment of plumbing), and wooden components thereof. For a complete description of the scope of the *Order*, see the Preliminary Decision Memorandum.⁴

Methodology

Commerce is conducting this review in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214. For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum. A list of sections in the Preliminary Decision Memorandum is attached in the appendix to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and

¹ See *Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Antidumping Duty Order*, 86 FR 22126 (April 21, 2020) (*Order*).

² See *Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Initiation of Antidumping Duty New Shipper Review*, 85 FR 77162 (December 1, 2020).

³ See Memorandum, "Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Decision Memorandum for the Preliminary Intent to Rescind the Antidumping Duty New Shipper Review; 2020," issued concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁴ *Id.*

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/>.

Preliminary Intent To Rescind the Antidumping Duty New Shipper Review

Based on information on the record, we determine that Hualing does not meet the minimum requirements in its request for the NSR under 19 CFR 351.214(b)(2)(i). Therefore, we preliminarily determine that it is appropriate to rescind the NSR with respect to Hualing.⁵

Public Comment

Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the time limit for filing case briefs.⁶ Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.⁷ Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each brief: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.⁸ Executive summaries should be limited to five pages total, including footnotes.⁹ All submissions, with limited exceptions, must be filed electronically using ACCESS.¹⁰ Electronically filed comments must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5 p.m. Eastern Time on the due date.

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 ACCESS. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of

⁵ We have not conducted a detailed *bona fides* analysis for these preliminary results due to the preliminary decision that Hualing is not eligible for an NSR. See the Preliminary Decision Memorandum.

⁶ See 19 CFR 351.309(d)(1); see also *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

⁷ See *Temporary Rule*.

⁸ See 19 CFR 351.309(c)(2) and (d)(2).

⁹ *Id.*

¹⁰ See 19 CFR 351.303.

issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. An electronically filed hearing request must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.¹¹

Commerce intends to issue the final results of this NSR, including the results of its analysis of issues raised in any written briefs, no later than 90 days after the date of publication of this notice, unless extended, pursuant to section 751(a)(2)(B) of the Act.

Assessment Rates

If Commerce issues a final rescission of this review, Commerce does not intend to instruct U.S. Customs and Border Protection (CBP) to liquidate the relevant entry because the entry is subject to the administrative review covering the period April 1, 2020, through March 31, 2021, initiated on June 11, 2021.¹²

If Commerce does not proceed to a final rescission of this NSR, pursuant to 19 CFR 351.202(b)(1), it will calculate an importer-specific assessment rate based on the final results of this review. However, pursuant to Commerce's refinement to its assessment practice in non-market economy cases, for entries that were not reported in the U.S. sales database submitted by Hualing, Commerce intends to instruct CBP to liquidate such entries at the China-wide rate.¹³

Cash Deposit Instructions

If Commerce proceeds to a final rescission of this review, the cash deposit rate will continue to be the China-wide rate for Hualing because Commerce will not have determined an individual weighted-average dumping margin for Hualing. If Commerce determines an individual weighted-average dumping margin for Hualing, it intends to instruct CBP to collect cash deposits, effective upon the publication of the final results of review, equal to the calculated weighted-average dumping margin.

Notification to Importers

This notice also 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 review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: August 12, 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. Discussion of the Methodology
- V. Recommendation

[FR Doc. 2021-17731 Filed 8-17-21; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-830]

Carbon and Certain Alloy Steel Wire Rod From Mexico: Final Results of Antidumping Duty Administrative Review, and Final Determination of No Shipments; 2018-2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that sales of carbon and certain alloy steel wire rod (wire rod) from Mexico were made at less than normal value (NV) during the period of review (POR), October 1, 2018, through September 30, 2019.

DATES: Applicable August 18, 2021.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Smith, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-2181.

SUPPLEMENTARY INFORMATION:

Background

On February 12, 2021, Commerce published the *Preliminary Results* of this review in the **Federal Register**.¹ We invited interested parties to comment on the *Preliminary Results*. Deacero S.A.P.I de C.V. (Deacero) was selected for individual examination as a mandatory respondent in this review. We received case briefs from Deacero and Nucor Corporation (Nucor, or the petitioner).² Subsequently, we received a rebuttal brief from the petitioner and a letter in lieu of a rebuttal brief from Deacero.³ On May 27, 2021, we extended the deadline for the final results of the administrative review until August 11, 2021.⁴ A complete summary of the events that occurred since publication of the *Preliminary Results* is found in the Issues and Decision Memorandum.⁵ Commerce conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order⁶

The merchandise subject to the *Order* is wire rod, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter. The subject merchandise is classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) primarily under the subheadings: 7213.91.3000, 7213.91.3010, 7213.91.3011, 7213.91.3015, 7213.91.3020, 7213.91.3090, 7213.91.3091,

¹ See *Carbon and Certain Alloy Steel Wire Rod from Mexico: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, and Partial Rescission of Antidumping Duty Administrative Review; 2018-2019*, 86 FR 9322 (February 12, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

² See Deacero's Letter, "Carbon and Certain Alloy Steel Wire Rod from Mexico—Case Brief," dated March 15, 2021; and Nucor's Letter, "Carbon and Certain Alloy Steel Wire Rod from Mexico: Resubmission of Nucor's Rebuttal {sic} Brief," dated April 5, 2021.

³ See Nucor's Letter, "Carbon and Certain Alloy Steel Wire Rod from Mexico—Rebuttal Brief," dated March 29, 2021; and Deacero's Letter, "Carbon and Certain Alloy Steel Wire Rod from Mexico—Letter in Lieu of Rebuttal Case Brief," dated March 29, 2021.

⁴ See Memorandum, "Carbon and Certain Alloy Steel Wire Rod from Mexico: Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated May 27, 2021.

⁵ See Memorandum, "Decision Memorandum for the Final Results, and Final Determination of No Shipments, of the 2018-2019 Administrative Review of the Antidumping Duty Order on Carbon and Certain Alloy Steel Wire Rod from Mexico," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

⁶ See *Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine*, 67 FR 65945 (October 29, 2002) (*Order*).

¹¹ See 19 CFR 351.310(c).

¹² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews* 86 FR 31282 (June 11, 2021).

¹³ See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694, 65694-95 (October 24, 2011).

7213.91.3092, 7213.91.3093, 7213.91.4500, 7213.91.4510, 7213.91.4590, 7213.91.6000, 7213.91.6010, 7213.91.6090, 7213.99.0030, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0000, 7227.20.0010, 7227.20.0020, 7227.20.0030, 7227.20.0080, 7227.20.0090, 7227.20.0095, 7227.90.6010, 7227.90.6020, 7227.90.6030, 7227.90.6035, 7227.90.6050, 7227.90.6051, 7227.90.6053, 7227.90.6058, 7227.90.6059, 7227.90.6080, and 7227.90.6085. The HTSUS subheadings are provided for convenience and customs purposes only; the written product description remains dispositive.

A full description of the scope of the Order is contained in the Issues and Decision Memorandum.

Analysis of Comments Received

We addressed all issues raised in the case and rebuttal briefs in the Issues and Decision Memorandum, which is hereby adopted by this notice. The issues are identified in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at <http://enforcement.trade.gov/frn/>.

Changes Since the Preliminary Results

Based on the receipt of updated sales information filed subsequent to the Preliminary Results, as well as our analysis of the comments received from parties, we have made certain revisions to the margin calculation for Deacero.⁷ For detailed information, see the Issues and Decision Memorandum.

Final Determination of No Shipments

In the Preliminary Results, Commerce preliminarily determined that Grupo Villacero S.A. de C.V. (Villacero) made no shipments of subject merchandise during the POR.⁸ As we have not received any information to contradict this determination, nor comment in opposition to our preliminary finding, we continue to determine that Villacero made no shipments of subject merchandise during the POR. Consistent with our practice, we will instruct U.S.

Customs and Border Protection (CBP) to liquidate any existing entries of subject merchandise produced by Villacero, but exported by other parties, at the rate for the intermediate reseller, if available, or at the all-others rate.

Rates for Respondents Not Selected for Individual Examination

Commerce did not select the following companies for individual examination: Talleres y Aceros S.A. de C.V. (Talleres y Aceros), and Ternium Mexico S.A. de C.V. (Ternium). Further, neither of these firms: Was the subject of a withdrawal of request for review; requested to participate as a voluntary respondent; submitted a claim of no shipments; nor was not otherwise collapsed with a mandatory respondent. As such, these companies remain respondents not selected for individual examination. As explained in the Issues and Decision Memorandum, we have assigned to Talleres y Aceros and Ternium the weighted-average dumping margin calculated for Deacero.

Final Results of the Review

Commerce determines that the following weighted-average dumping margins exist for the period October 1, 2018 through September 30, 2019:

Producers/exporters	Weighted-average dumping margins (percent)
Deacero S.A.P.I de C.V	9.82
Talleres y Aceros S.A. de C.V ...	9.82
Ternium Mexico S.A. de C.V	9.82

Disclosure

We intend to disclose the calculations performed to parties in this proceeding within five days after publication of these final results in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act, and 19 CFR 351.212(b)(1), Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

For Deacero, Commerce has calculated importer-specific antidumping duty assessment rates by aggregating the total amount of dumping calculated for the examined sales of each importer and dividing each of these amounts by the total entered value associated with those sales in accordance with 19 CFR 351.212(b)(1). Pursuant to 19 CFR 351.106(c)(2), we

will instruct CBP to liquidate without regard to antidumping duties any entries for which the importer-specific assessment rate is zero or *de minimis*. For entries of subject merchandise during the POR produced by Deacero for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For the companies not selected for individual examination, we will instruct CBP to apply an assessment rate to all entries produced and/or exported by those companies equal to the dumping margin indicated above. Commerce intends to issue assessment instructions to CBP 41 days after the date of publication of these final results of review.⁹

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided by section 751(a)(2) of the Act: (1) For producers or exporters covered in this administrative review, the cash deposit rates will be the rates established in the final results of this administrative review; (2) for producers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer is, then the cash deposit rate will be the rate established for the most recent period for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 20.11 percent, the all-others rate established in the investigation.¹⁰ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation

⁷ See Issues and Decision Memorandum.
⁸ See Preliminary Results, 86 FR at 9323 and accompanying PDM at 5-6.

⁹ See 19 CFR 356.8(a).
¹⁰ See Order, 67 FR at 65947.

of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h).

Dated: August 11, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Final Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Final Determination of No Shipments
- V. Margin for Companies Not Selected for Individual Examination
- VI. Changes Since the *Preliminary Results*
- VII. Discussion of Comments
 - Comment 1: Whether Commerce Should Treat Section 232 Duties as United States Import Duties and Whether Commerce Made a Clerical Error When Deducting Section 232 Duties from U.S. Price
 - Comment 2: Whether Commerce Made a Clerical Error Regarding the Treatment of Early Payment Discounts
 - Comment 3: Whether Commerce Made a Clerical Error Regarding the Selection of Customer Code
- VIII. Recommendation

[FR Doc. 2021-17650 Filed 8-17-21; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-901]

Organic Soybean Meal From India: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable August 18, 2021.

FOR FURTHER INFORMATION CONTACT: Andrew Huston, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-4261.

SUPPLEMENTARY INFORMATION:

Background

On April 20, 2021, the Department of Commerce (Commerce) initiated a less-than-fair-value (LTFV) investigation(s) of imports of organic soybean meal from India.¹ Currently, the preliminary determination is due no later than September 7, 2021.

Postponement of Preliminary Determination

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in an LTFV investigation within 140 days after the date on which Commerce initiated the investigation. However, section 733(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 190 days after the date on which Commerce initiated the investigation if: (A) The petitioner² makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless

¹ See *Organic Soybean Meal from India: Initiation of Less-Than-Fair Value Investigation*, 86 FR 22146 (April 27, 2021) (*Initiation Notice*).

² The petitioners are Organic Soybean Processors of America and the American Natural Processors, LLC, Organic Production Services, LLC, Professional Proteins, Ltd., Sheppard Grain Enterprises LLC, Simmons Grain Company, Super Soy, LLC, and Tri-State Crush LLC.

it finds compelling reasons to deny the request.

On August 9, 2021, the petitioners submitted a timely request that Commerce postpone the preliminary determinations in this LTFV investigation.³ The petitioners requested the postponement to permit Commerce to “fully develop the record in this investigation,” assess questionnaire responses, and issue supplemental questionnaires.⁴

For the reasons stated above and because there are no compelling reasons to deny the request, Commerce, in accordance with section 733(c)(1)(A) of the Act, is postponing the deadline for the preliminary determination by 50 days (*i.e.*, 190 days after the date on which this investigation was initiated). As a result, Commerce will issue its preliminary determination no later than October 27, 2021. In accordance with section 735(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determination of this investigation will continue to be 75 days after the date of the preliminary determination, unless postponed at a later date.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: August 12, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2021-17729 Filed 8-17-21; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB140]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Geophysical Survey in the Arctic Ocean

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the

³ See Petitioners' Letter, “Organic Soybean Meal from India: Petitioners' Request to Postpone the Preliminary Determination,” dated August 9, 2021.

⁴ *Id.*

University of Alaska Geophysics Institute (UAGI) to incidentally harass, by Level B harassment, marine mammals during geophysical surveys in the Arctic Ocean. This project is funded by the National Science Foundation (NSF).

DATES: This Authorization is effective for one year, from August 11, 2021 through August 10, 2022.

FOR FURTHER INFORMATION CONTACT: Kim Corcoran, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the “take” of marine mammals, with certain exceptions. sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements

pertaining to the monitoring and reporting of the takings.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On February 12, 2021, NMFS received a request from UAGI for an IHA to take marine mammals incidental to a geophysical survey in the Arctic Ocean. The application was deemed adequate and complete on April 6, 2021. UAGI’s request is for take of 13 species of marine mammals, by Level B harassment only. No Level A harassment is anticipated. Neither UAGI nor NMFS expects serious injury or mortality to result from this activity. Therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

Researchers at UAGI, with funding from NSF, plan to conduct a seismic survey from the Research Vessel (R/V) *Sikuliaq* in the Arctic Ocean to document the structure and stratigraphy of the Chukchi Borderland and adjacent Canada basin (see Figure 1). The proposed activity is planned to take place in late summer 2021 (August/September) with a total of 30 days of data acquisition. The survey will include both high-energy and low-energy components. High-energy ocean bottom seismometer (OBS) refraction surveys will use a 6-airgun, 3,120 cubic inch (in³) array and consist of ~12 percent of total survey effort (henceforth referred to as high-energy survey). Low-energy multi-channel seismic (MCS) reflection surveys will use a 2-airgun array with a total discharge volume of 1040 in³ and consist of ~88 percent of total survey effort (henceforth referred to as low-energy survey).

Dates and Duration

The activity will occur between August and September, 2021. The activity is planned to occur for 45 days total, with ~30 days dedicated to seismic data acquisition (with 24-hours a day operations), ~8 days devoted to transit and 7 days used for equipment deployment and recovery.

Specific Geographic Region

The surveys will occur within ~73.5–81.0° N, ~139.5–168° W (≥300 kilometer

(km) north of Utqiagvik). Representative survey track lines can be seen in Figure 1. Some deviation in track lines, including the order of survey operations, could be necessary for reasons such as science drivers, poor data quality, inclement weather, or mechanical issues with the research vessel and/or equipment. Thus, the track lines could occur anywhere within the coordinates noted above and within the study area. Four percent of the surveys will occur within the U.S. Exclusive Economic Zone (EEZ) with the remaining part of the survey occurring beyond the EEZ. The activity will take place in depths ranging from 200–4,000 meters (m). The R/V *Sikuliaq* would likely leave from and return to Nome, AK.

The low-energy survey activity will begin ~300 km from the Alaska coastline (North of Utqiagvik) and extend ~800 km north from the initial survey site (*i.e.*, the survey would occur ~300–1,100 km from the Alaska coastline). The high-energy survey activity will only occur ~530 km from the coastline and occur only in the northeastern part of the survey area (See Figure 1). Eighty percent of the total survey will occur in deep waters (>1,000 m) with the remainder of the survey occurring in intermediate depth waters (100–1,000m); no surveying will occur in waters <100 m deep. All high-energy surveys (680 km total) will occur in deep waters, while 67 percent of low-energy surveys will occur in deep waters (3,981 km). The remainder of low-energy surveys (1,189 km or 23 percent) will occur in intermediate depth waters.

A detailed description of the planned geophysical survey project is provided in the **Federal Register** notice for the proposed IHA (86 FR 28787; May 28, 2021). Since that time, no changes have been made to the planned survey activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specified activity.

Mitigation, monitoring, and reporting measures are described in detail later in this document (please see Mitigation and Monitoring and Reporting).

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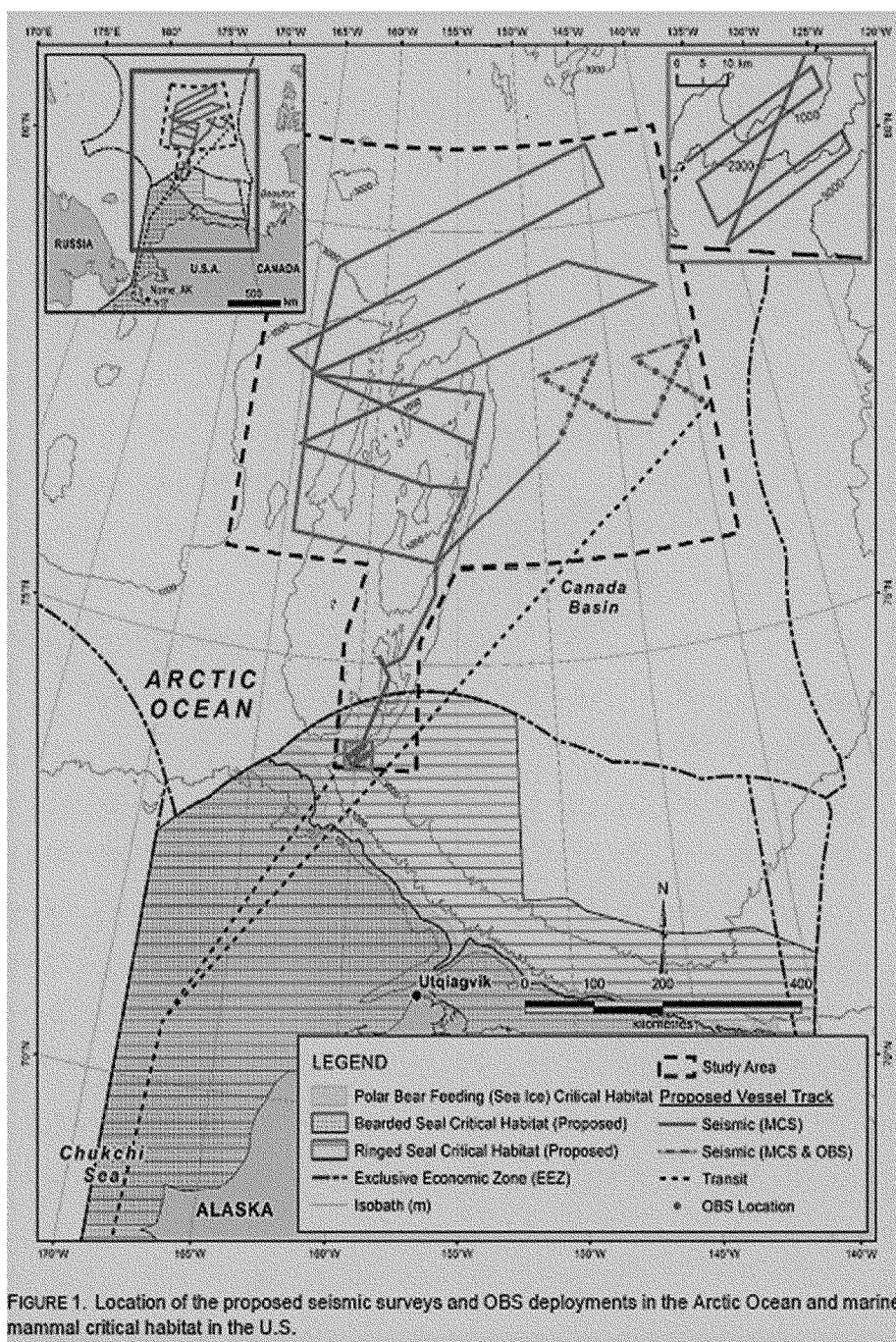


FIGURE 1. Location of the proposed seismic surveys and OBS deployments in the Arctic Ocean and marine mammal critical habitat in the U.S.

Figure 1. Location of the seismic surveys and OBS deployments in the Arctic Ocean and Endangered Species Act critical habitat in the U.S.

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Comments and Responses

A notice of NMFS' proposal to issue an IHA to UAGI was published in the **Federal Register** on May 28, 2021 (86 FR 28787). That notice described, in detail, UAGI's proposed activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. NMFS received a letter from the Alaska

Eskimo Whaling Commission (AEWC), which was the only comment received for this project. The letter noted that AEWC does not oppose UAGI's project but expressed concern regarding NMFS' decision not to subject the associated monitoring plan to independent peer review prior to making a decision regarding the requested IHA. In noting its concern, AEWC asserted that NMFS does not have discretion regarding whether to subject monitoring plans to

peer review, stating that NMFS' discretion extends only to how it engages peer review. While NMFS agrees with AEWC's statement in cases where the proposed activity may affect the availability of a species or stock of marine mammals for taking for subsistence purposes, NMFS' determined the proposed activity will not affect the availability of any species or stock of marine mammals for taking for subsistence purposes. Therefore,

peer review of the monitoring plan is not required.

NMFS' conclusion that UAGI's survey activity will not affect the availability of a species or stock of marine mammal for taking for subsistence purposes was based on the fact that the activity is a significant distance from shore and well beyond traditional hunting areas. The take UAGI requested will occur incidental to activities conducted well beyond 200 km from any hunting area or buffer. The survey will occur no closer than 300 km from the Alaska coastline, with the high-energy portion of the project occurring no closer than 530 km from the coastline. The maximum estimated harassment zone for the survey is 2.4 km and 4.65 km for the low-energy and high-energy survey portions, respectively. Therefore, any take from these activities will not directly interfere with the hunt. Furthermore, there is no information supporting a conclusion that any behavioral disturbance of bowhead whales occurring at such great distance from traditional hunting areas (300–500 km) would affect their subsequent behavior in a manner that would interfere with subsistence uses should those whales later interact with hunters. As stated above, based on the foregoing information, NMFS determined that the activity would not affect the availability of any species or stock for taking for subsistence purposes and, therefore, that peer review of the monitoring plan was not warranted. No changes have been made from the proposed IHA to the final IHA in response to comments.

Changes From the Proposed IHA to Final IHA

Following the public comment period, NMFS identified an error in the calculation of bowhead whale density. The density value for bowhead whales described in the notice of proposed IHA (86 FR 28787; May 28, 2021) (0.0124) was itself correct, but represents the number of individuals per 100 km² rather than individuals per 1 km², as was assumed for the proposed IHA. NMFS has corrected this error and, as a result, the authorized Level B harassment take number is reduced from 339 to 3.

Additionally, NMFS identified errors made when calculating the total take numbers proposed for authorization for all species due to use of incorrect estimated Level A harassment zoned areas and double counting of estimated exposures within Level A harassment zones (*i.e.*, estimated exposures were double counted as both Level B harassment takes and as

independently estimated exposures within the Level A harassment zones, which were also tallied as takes by Level B harassment). These errors have been corrected, and the revised authorized take numbers are shown in Table 7. All revised take numbers are lower than those proposed for authorization (86 FR 28787; May 28, 2021). Please refer to the Estimated Take section for further detail regarding this change.

Lastly, we note a mistake in the proposed IHA that has since been corrected. One section of the proposed IHA (4(f)(iv)) described the shutdown mitigation measure for bowhead whales to be at any distance while the proposed FR notice and the rest of the proposed IHA stated this distance to be at 1,500 m. This has since been corrected for the final IHA and the shutdown area and the exclusion zone will be at 1,500 m bowhead whales. Additionally, the requirement for bigeye binoculars has been removed as they are not available on board the R/V *Sikuliaq*.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>) and more general information about these species (*e.g.*, physical and behavioral descriptions) may be found on NMFS' website (<https://www.fisheries.noaa.gov/find-species>). Additional information may be found in the Aerial Survey of Arctic Marine Mammals (ASAMM) reports, which are available online at <https://www.fisheries.noaa.gov/alaska/marine-mammal-protection/aerial-surveys-arctic-marine-mammals>.

Table 1 lists all species or stocks for which take is expected and authorized for this action, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy from the Society for Marine Mammalogy (2021). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal

stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprise that stock. For most species, stock abundance estimates are based on sightings within the U.S. EEZ; however, for some species, this geographic area may extend beyond U.S. waters. Survey abundance estimates may be used for other species. Survey abundance (as compared to stock or species abundance) is the total number of individuals estimated within the survey area, which may or may not align completely with a stock's geographic range as defined in the SARs. These surveys may also extend beyond U.S. waters. In this case, the survey area outside of the U.S. EEZ does not necessarily overlap with the ranges for stocks managed by NMFS. However, we assume that individuals of these species that may be encountered during the survey would be part of those stocks. Additionally, six species listed in Table 1 indicate Unknown abundance estimates. This may be due to outdated data and population estimates or data is not representative of the entire stock.

All managed stocks in this region are assessed in NMFS' U.S. Alaska and Pacific SARs (*e.g.*, Muto *et al.*, 2021, Carretta *et al.*, 2021). All values presented in Table 1 are the most recent available at the time of publication and are available in the 2020 SARs (Muto *et al.*, 2021, Carretta *et al.*, 2021) (available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports>).

In addition, the Pacific walrus (*Odobenus rosmarus divergens*) and the Polar bear (*Ursus maritimus*) may be found in the Arctic. However, Pacific walruses and Polar bears are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

TABLE 1—MARINE MAMMALS EXPECTED TO OCCUR IN THE SURVEY AREA

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) ¹	Stock abundance (CV, N _{min} , most recent abundance survey) ²	PBR	Annual M/SI ³
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae: Gray whale	<i>Eschrichtius robustus</i>	Eastern N Pacific	- , - , N	26,960 (0.05, 25,849, 2016) ..	801	131
Family Balaenidae: Bowhead whale	<i>Balaena mysticetus</i>	Western Arctic	E, D, Y	16,820	161	56
				(0.052,16,100, 2011)		
Family Balaenopteridae (rorquals):						
Fin whale	<i>Balaenoptera physalus</i>	Northeast Pacific ^{4*}	E, D, Y	Unknown	UND	0.6
Humpback whale	<i>Megaptera novaeangliae</i>	Western N Pacific*	E, D, Y	1,107 (0.3, 865, 2006)	3	2.8
Minke whale	<i>Balaenoptera acutorostrata</i>	Alaska ^{4*}	- , - , N	Unknown	UND	0
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Beluga whale	<i>Delphinapterus leucas</i>	Beaufort Sea ⁴	- , - , N	39,258 (0.229, N/A, 1992)	UND	104
		Eastern Chukchi	- , - , N	13,305 (0.51, 8,875, 2017)	178	55
Killer whale	<i>Orcinus orca</i>	Alaska resident	- , - , N	2,347 c (N/A, 2347, 2012)	24	1
Narwhal	<i>Monodon Monoceros</i>	Unidentified ^{4*}	- , - , N	Unknown	UND	0
Family Phocoenidae (porpoises):						
Harbor Porpoise	<i>Phocoena phocoena</i>	Bering Sea ^{4*}	- , - , Y	Unknown	UND	0.4
Order Carnivora—Superfamily Pinnipedia						
Family Phocidae (earless seals):						
Bearded Seal	<i>Erignathus barbatus</i>	Beringia ^{4*}	T, D, Y	Unknown	UND	6,709
Ribbon Seal	<i>Histriophoca fasciata</i>	Unidentified*	- , - , N	184,687 (see SAR, 163,086, 2013).	9,785	163
Ringed Seal	<i>Pusa hispida</i>	Arctic	T, D, Y	Unknown	5,100	6,459
Spotted Seal	<i>Phoca largha</i>	Bering	- , - , N	461,625 (see SAR, 423,237, 2013).	25,394	5,254

* Stocks marked with an asterisk are addressed in further detail in the text below.

¹ Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

² NMFS marine mammal stock assessment reports online at: www.nmfs.noaa.gov/pr/sars/. CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable. For most stocks of killer whales, the abundance values represent direct counts of individually identifiable animals; therefore there is only a single abundance estimate with no associated CV. For certain stocks of pinnipeds, abundance estimates are based upon observations of animals (often pups) ashore multiplied by some correction factor derived from knowledge of the species' (or similar species') life history to arrive at a best abundance estimate; therefore, there is no associated CV. In these cases, the minimum abundance may represent actual counts of all animals ashore.

³ These values, found in NMFS' 2020 SARs (Muto *et al.*, 2021, Carretta *et al.*, 2021), represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.*, commercial fisheries, ship strike).

⁴ Abundance estimates for these stocks are not considered current. PBR is therefore considered undetermined for these stocks, as there is no current minimum abundance estimate for use in calculation. We nevertheless present the most recent abundance estimates, as these present the best available information for use in this document.

As indicated above, all 13 species (with 14 managed stocks) in Table 1 could temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have authorized it. All species that could potentially occur in the survey areas are included in Table 4 of the IHA application.

A detailed description of the species likely to be affected by the geophysical survey, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (86 FR 28787; May 28, 2021); since that time, we are not aware of any changes in the status of these species or stocks; therefore, detailed descriptions are not

provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' website (www.nmfs.noaa.gov/pr/species/mammals/) for generalized species accounts.

Unusual Mortality Events (UME)

A UME is defined under the MMPA as "a stranding that is unexpected; involves a significant die-off of any marine mammal population; and demands immediate response." For more information on UMEs, please visit: www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-unusual-mortality-events. Currently recognized UMEs in Alaska involving species under NMFS' jurisdiction include those affecting ice seals in the Bering and Chukchi Seas, and gray whales. Since June 1, 2018,

elevated strandings for bearded, ringed and spotted seals have occurred in the Bering and Chukchi seas in Alaska, with causes undetermined. As of August 5, 2021, there have been 357 recorded seal strandings. For more information, please visit: www.fisheries.noaa.gov/alaska/marine-life-distress/2018-2020-ice-seal-unusual-mortality-event-alaska.

Since January 1, 2019, elevated gray whale strandings have occurred along the west coast of North America from Mexico through Alaska. As of August 5, 2021, there have been a total of 487 whales reported in the event, with approximately 225 dead whales in Mexico, 244 whales in the United States (including 108 in Alaska), and 18 whales in British Columbia, Canada. For the United States, the historical 18-year 5-month average (Jan–May) is 14.8 whales for this same time-period.

Several dead whales have been emaciated with moderate to heavy whale lice (cyamid) loads. Necropsies have been conducted on a subset of whales with additional findings of vessel strike in three whales and entanglement in one whale. In Mexico, 50–55 percent of the free-ranging whales observed in the lagoons in winter have been reported as “skinny” compared to the annual average of 10–12 percent “skinny” whales normally seen. The cause of the UME is as yet undetermined. For more information, please visit: www.fisheries.noaa.gov/national/marine-life-distress/2019-2020-gray-whale-unusual-mortality-event-along-west-coast-and.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals

underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (e.g., Richardson *et al.*, 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.*, (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have

been successfully completed for mysticetes (i.e., low-frequency cetaceans). Subsequently, NMFS’ 2018 Revision to its *Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing* (Technical Guidance) (NMFS, 2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.*, (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 2.

TABLE 2—MARINE MAMMAL HEARING GROUPS [NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, <i>Kogia</i> , river dolphins, cephalorhynchid, <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (i.e., all species within the group), where individual species’ hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.*, 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.*, 2006; Kastelein *et al.*, 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Thirteen marine mammal species (nine cetacean and four pinniped (all phocid) species) have the reasonable potential to co-occur with the survey activities. Please refer to Table 1. Of the cetacean species that may be present, five are classified as low-frequency cetaceans (i.e., all mysticete species), three are classified as mid-frequency cetaceans (i.e., all delphinid species), and one is classified as high-frequency cetacean (i.e., harbor porpoise).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

Detailed descriptions of the potential effects of similar specified activities

have been provided in other recent **Federal Register** notices, including for survey activities using the same methodology and over a similar amount of time, and affecting similar species (e.g., 83 FR 29212, June 22, 2018; 84 FR 14200, April 9, 2019; 85 FR 19580, April 7, 2020). Section VII of UAGI’s application provides a comprehensive discussion of the potential effects of the survey. We have reviewed UAGI’s application and believe it is accurate and complete. No significant new information is available. The effects of underwater noise from UAGI’s geophysical survey have the potential to result in behavioral harassment of marine mammals in the vicinity of the action area. The **Federal Register** notice for the proposed IHA (86 FR 28787; May 28, 2021) included a discussion of the effects of anthropogenic noise on marine mammals, therefore that information is not repeated here; please to the aforementioned notice for that information.

The Estimated Take section includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact

Analysis and Determination section considers the potential effects of the specified activity, the Estimated Take section, and the Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Description of Active Acoustic Sound Sources

The notice of proposed IHA provided a brief technical background on sound, on the characteristics of certain sound types, and on metrics used in this proposal inasmuch as the information is relevant to the specified activity and to a discussion of the potential effects of the specified activity on marine mammals found later in this document. Please see that document (86 FR 28787; May 28, 2021) for additional information. For general information on sound and its interaction with the marine environment, please see, e.g., Au and Hastings (2008); Richardson *et al.* (1995); Urick (1983).

Estimated Take

This section provides an estimate of the number of incidental takes for authorization through this IHA, which informed both NMFS' consideration of "small numbers" and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes will be by Level B harassment, as use of seismic airguns may result, either directly or as a result of TTS, in disruption of behavioral patterns of marine mammals. The mitigation and related monitoring measures are expected to minimize the severity of such taking to the extent practicable. Moreover, based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.*, implementation of extended shutdown distances for certain species)—discussed in detail below in the Mitigation section—Level A harassment is neither anticipated nor authorized.

As described previously, no mortality is anticipated or authorized for this

activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.*, previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the take estimate.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur Permanent Threshold Shift (PTS) of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.*, frequency, predictability,

duty cycle), the environment (*e.g.*, bathymetry), the receiving animals (hearing, motivation, experience, demography, behavioral context), and the distance between the sound source and the animal, and can be difficult to predict (Southall *et al.*, 2007, Ellison *et al.*, 2012). NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals may be behaviorally harassed (*i.e.*, Level B harassment) when exposed to underwater anthropogenic noise above received levels 160 dB re 1 µPa (rms) for the impulsive sources (*i.e.*, seismic airguns) evaluated here.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). UAGI's seismic survey includes the use of impulsive sources (seismic airgun).

These thresholds are provided in Table 3 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>.

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds* (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	Cell 1: $L_{pk,flat}$: 219; dB; $L_{E,LF,24h}$: 183 dB	Cell 2: $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	Cell 3: $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	Cell 4: $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	Cell 5 $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	Cell 6: $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	Cell 7: $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	Cell 8: $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	Cell 9: $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	Cell 10: $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 µPa, and cumulative sound exposure level (L_E) has a reference value of 1µPa²s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.*, varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and acoustic propagation modeling.

The acoustic propagation modeling methodologies are described in greater detail in Appendix A of UAGI’s IHA application. The survey will primarily acquire data using the 2-airgun array with a total discharge volume of 1,040 in³ and an approximately 15-second shot interval. During approximately 12 percent of the planned survey tracklines, the 6-airgun, 3,120 in³ array will be used with a 60-second shot interval. All tracklines will be surveyed with a maximum tow depth of 9 m. The modeling assumed an airgun firing pressure of 2,540 psi. Propagation modeling for UAGI’s application follows the approach used by the Lamont-Doherty Earth Observatory (L-DEO) for other, similar IHA applications. L-DEO uses ray tracing for the direct wave traveling from the array to the receiver and its associated source ghost (reflection at the air-water interface in the vicinity of the array), in a constant-velocity half-space (infinite

homogeneous ocean layer, unbounded by a seafloor). To validate the model results, L-DEO measured propagation of pulses from a 36-airgun array at a tow depth of 6 m in the Gulf of Mexico, for deep water (~1,600 m), intermediate water depth on the slope (~600–1,100 m), and shallow water (~50 m) (Tolstoy *et al.*, 2009; Diebold *et al.*, 2010).

L-DEO collected a MCS data set from R/V *Marcus G. Langseth* (with the same 36-airgun array referenced above) on an 8 km streamer in 2012 on the shelf of the Cascadia Margin off of Washington in water up to 200 m deep that allowed Crone *et al.* (2014) to analyze the hydrophone streamer (>1,100 individual shots). These empirical data were then analyzed to determine in situ sound levels for shallow and upper intermediate water depths. These data suggest that modeled radii were 2–3 times larger than the measured radii in shallow water. Similarly, data collected by Crone *et al.* (2017) during a survey off New Jersey in 2014 and 2015 confirmed that in situ measurements collected by R/V *Langseth* hydrophone streamer were 2–3 times smaller than the predicted radii.

L-DEO model results are used to determine the assumed radial distance

to the 160-dB rms threshold for these arrays in deep water (>1,000 m) (down to a maximum water depth of 2,000 m) (see Table 4). Water depths in the project area may be up to 4,000 m, but marine mammals in the region are generally not anticipated to dive below 2,000 m (Costa and Williams, 1999). The radii for intermediate water depths (100–1,000 m) are derived from the deep-water ones by applying a correction factor (multiplication) of 1.5. No survey effort will occur in water depths <100 m.

The area expected to be ensonified was determined by entering the planned survey lines into a GIS and then “buffering” the lines by the applicable 160-dB distance (see Appendix B in IHA application). The resulting ensonified areas were then increased by 25 percent to allow for any necessary additional operations, such as re-surveying segments where data quality was insufficient. This approach assumes that no marine mammals would move away or toward the trackline in response to increasing sound levels before the levels reach the threshold as R/V *Sikuliaq* approaches.

TABLE 4—PREDICTED RADIAL DISTANCES TO ISOPLETHS CORRESPONDING TO LEVEL B HARASSMENT THRESHOLD

Source and volume	Tow depth (m)	Water depth (m)	Level B harassment zone (m)
6 airgun array; 3,120 in ³	9	>1,000 100–1,000	¹ 4,640 ³ 6,960
2 airgun array; 1,040 in ³	9	>1,000 100–1,000	¹ 1,604 ² 2,406

¹ Distance based on L-DEO model results.

² Based on L-DEO model results with 1.5x correction factor applied.

Predicted distances to Level A harassment isopleths, which vary based on marine mammal hearing groups, were calculated based on L-DEO modeling performed using the NUCLEUS source modeling software program and the NMFS User Spreadsheet, described below. The acoustic thresholds for impulsive sounds (*e.g.*, airguns) contained in the Technical Guidance were presented as dual metric acoustic thresholds using both the cumulative sound exposure level) SEL_{cum} and peak sound pressure metrics (NMFS 2018). As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded (*i.e.*, metric resulting in the largest isopleth). The SEL_{cum} metric considers both level and duration of exposure, as well as auditory weighting

functions by marine mammal hearing group. In recognition of the fact that the requirement to calculate Level A harassment ensonified areas could be more technically challenging to predict due to the duration component and the use of weighting functions in the new SEL_{cum} thresholds, NMFS developed an optional User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to facilitate the estimation of take numbers.

The values for SEL_{cum} and peak Sound Pressure Level (SPL) were derived from calculating the modified far-field signature. The farfield signature is often used as a theoretical representation of the source level. To compute the farfield signature, the source level is estimated at a large

distance below the array (*e.g.*, 9 km), and this level is back projected mathematically to a notional distance of 1 m from the array’s geometrical center. However, when the source is an array of multiple airguns separated in space, the source level from the theoretical farfield signature is not necessarily the best measurement of the source level that is physically achieved at the source (Tolstoy *et al.*, 2009). Near the source (at short ranges, distances <1 km), the pulses of sound pressure from each individual airgun in the source array do not stack constructively, as they do for the theoretical farfield signature. The pulses from the different airguns spread out in time such that the source levels observed or modeled are the result of the summation of pulses from a few airguns, not the full array (Tolstoy *et al.*, 2009). At larger distances, away from

the source array center, sound pressure of all the airguns in the array stack coherently, but not within one time sample, resulting in smaller source levels (a few dB) than the source level derived from the farfield signature. Because the farfield signature does not take into account the large array effect near the source and is calculated as a point source, the modified farfield signature is a more appropriate measure of the sound source level for distributed sound sources, such as airgun arrays. The acoustic modeling methodology as used for estimating Level B harassment distances with a small grid step of 1 m in both the inline and depth directions. The propagation modeling takes into account all airgun interactions at short distances from the source, including interactions between subarrays, which are modeled using the NUCLEUS software to estimate the notional signature and MATLAB software to calculate the pressure signal at each mesh point of a grid.

In order to more realistically incorporate the Technical Guidance’s weighting functions over the seismic array’s full acoustic band, unweighted spectrum data (modeled in 1 Hz bands) were used to make adjustments (dB) to the unweighted spectrum levels, by frequency, according to the weighting functions for each relevant marine mammal hearing group. These adjusted/weighted spectrum levels were then converted to pressures (μPa) in order to integrate them over the entire broadband spectrum, resulting in broadband weighted source levels by hearing group that could be directly incorporated within the User Spreadsheet (*i.e.*, to override the Spreadsheet’s more simple weighting factor adjustment). Using the User Spreadsheet’s “safe distance” methodology for mobile sources (described by Sivle *et al.*, 2014) with the hearing group-specific weighted source levels, and inputs assuming spherical spreading propagation and source velocities and shot intervals specific to

the planned survey, potential radial distances to auditory injury zones were then calculated for SEL_{cum} thresholds. For full detail of the modeling methodology used for estimating distance to Level A harassment peak pressure and cumulative SEL criteria, please see Appendix A of UAGI’s application.

Inputs to the User Spreadsheets in the form of estimated source levels are shown in Appendix A of UAGI’s application. User Spreadsheets used by UAGI to estimate distances to Level A harassment isopleths for the airgun arrays are also provided in Appendix A of the application. Outputs from the User Spreadsheets in the form of estimated distances to Level A harassment isopleths for the survey are shown in Table 5. As described above, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the dual metrics (SEL_{cum} and Peak SPL_{flat}) is exceeded (*i.e.*, metric resulting in the largest isopleth).

TABLE 5—MODELED RADIAL DISTANCES (m) TO ISOPLETHS CORRESPONDING TO LEVEL A HARASSMENT THRESHOLDS

Source (volume)	Threshold	Level A harassment zone (m)			
		LF cetaceans	MF cetaceans	HF cetaceans	Phocids
6-airgun array (3,120 in ³)	SEL _{cum}	51	0	0	0
	Peak	30	7	212	34
2-airgun array (1,040 in ³)	SEL _{cum}	17	0	0	0
	Peak	10	3	73	12

Note that because of some of the assumptions included in the methods used (*e.g.*, stationary receiver with no vertical or horizontal movement in response to the acoustic source), isopleths produced may be overestimates to some degree, which will ultimately result in some degree of overestimation of Level A harassment. However, these tools offer the best way to predict appropriate isopleths when more sophisticated modeling methods are not available. NMFS continues to develop ways to quantitatively refine these tools and will qualitatively address the output where appropriate. For mobile sources, such as this seismic survey, the User Spreadsheet predicts the closest distance at which a stationary animal would not incur PTS if the sound source traveled by the animal in a straight line at a constant speed.

Auditory injury is unlikely to occur for mid-frequency and low-frequency cetaceans given very small modeled zones of injury for those species (all estimated zones less than 10 m for mid-

frequency cetaceans, up to a maximum of 51 m for low-frequency cetaceans and 34 m for phocid pinnipeds), in context of distributed source dynamics. Similarly, for high-frequency cetaceans, the maximum modeled injury zone for the low-energy array (88 percent of survey effort) is 73 m and auditory injury would be unlikely to occur during use of that array. The source level of the array is a theoretical definition assuming a point source and measurement in the far-field of the source (MacGillivray, 2006). As described by Caldwell and Dragoset (2000), an array is not a point source, but one that spans a small area. In the far-field, individual elements in arrays will effectively work as one source because individual pressure peaks will have coalesced into one relatively broad pulse. The array can then be considered a “point source.” For distances within the near-field, *i.e.*, approximately 2–3 times the array dimensions, pressure peaks from individual elements do not arrive simultaneously because the observation point is not equidistant

from each element. The effect is destructive interference of the outputs of each element, so that peak pressures in the near-field will be significantly lower than the output of the largest individual element. Here, the estimated Level A harassment isopleth distances would in all cases (other than for high-frequency cetaceans) be expected to be within the near-field of the array where the definition of source level breaks down. Therefore, actual locations within this distance of the array center where the sound level exceeds relevant harassment criteria would not necessarily exist.

In consideration of the received sound levels in the near-field as described above, we expect the potential for Level A harassment of low- and mid-frequency cetaceans and phocid pinnipeds to be de minimis, even before the likely moderating effects of aversion and/or other compensatory behaviors (*e.g.*, Nachtigall *et al.*, 2018) are considered. A similar conclusion may be drawn for high-frequency cetaceans relative to use of the low-energy airgun

array. We do not believe that Level A harassment is a likely outcome for any low- or mid-frequency cetacean or phocid pinniped and are not authorizing any Level A harassment for these species. For high-frequency cetaceans, the larger estimated Level A harassment zone associated with the high-energy array will be present for only 12 percent of total survey effort, and given the expected rarity of occurrence for harbor porpoise, no incidents of Level A harassment are expected.

Marine Mammal Occurrence

Information about the presence, density, and group dynamics of marine mammals that informs the take calculations was provided in our notice of proposed IHA (86 FR 28787; May 28, 2021). Information that has remained unchanged is not reprinted here. Density values are shown in Table 6.

The bowhead whale density value described in the notice of proposed IHA (86 FR 28787; May 28, 2021) was correct; however, the incorrect units were used. The value reported in the notice of proposed IHA (0.0124 whales/km²) would correctly be stated as 0.0124 whales/100 km², and the corrected density is used here.

TABLE 6—DENSITY VALUES USED FOR TAKE ANALYSIS, CALCULATED BY UAGI

Species	Density (individuals/km ²)
Bowhead whale	0.000124
Gray whale	0
Fin whale	0
Humpback whale	0
Minke whale	0
Beluga whale	0.0255
Killer whale	Unknown
Narwhal	Unknown
Harbor porpoise	Unknown
Bearded seal	0.0332
Ribbon seal	0.0677
Ringed seal	0.376
Spotted seal	0.0007

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate. In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in Level A or Level B harassment, radial distances from the airgun array to predicted isopleths corresponding to the Level A harassment and Level B harassment thresholds are calculated, as described above. Those radial distances are then used to calculate the area(s) around the airgun array predicted to be ensonified to sound levels that exceed the Level A and Level B harassment thresholds. The distance for the 160-dB threshold (based on L-DEO model results) was used to draw a buffer around every transect line in GIS to

determine the total ensonified area in each depth category. Estimated incidents of exposure above Level A and Level B harassment criteria are presented in Table 7. As noted previously, UAGI has added 25 percent in the form of operational days, which is equivalent to adding 25 percent to the line-kilometers to be surveyed. This accounts for the possibility that additional operational days are required, and is included in the estimates of actual exposures.

The number of individual marine mammals potentially exposed to airgun sounds with received levels ≥160 dB re 1 μPa_{rms} (Level B) was estimated following NSF's take calculation method by multiplying the estimated densities by the total area expected to be ensonified above the Level threshold. The total ensonified area was multiplied by 25 percent to account for any necessary additional operations, such as re-surveying segments where data quality was insufficient. This approach assumes that no marine mammals would move away or toward the trackline in response to increasing sound levels before the levels reach the threshold as R/V *Sikuliaq* approaches. This value was then multiplied by the estimated densities for each species to produce estimated Level B takes. Given the location of the survey being far north in the Arctic, we expect that the density values, and thus estimated take numbers, are conservative estimates of what is likely to be encountered during the survey.

TABLE 7—ESTIMATED TAKING BY LEVEL A AND LEVEL B HARASSMENT, AND PERCENTAGE OF POPULATION

Species	Stock ¹	Estimated Level B harassment	Estimated Level A harassment	Authorized Level B harassment	Authorized Level A harassment	Total take	Percent of stock ¹
Bowhead whale	Western Arctic	3	0	3	0	3	0.02
Humpback whale ²	WN Pacific	0	0	2	0	2	0.01
Fin whale ^{2,4}	NE Pacific	0	0	2	0	2	0.18
Gray whale ²	EN Pacific	0	0	2	0	2	0.01
Minke whale ^{2,4}	Alaska	0	0	2	0	2	0.01
Beluga whale	Beaufort Sea	696	1	697	0	697	1.33
	Eastern Chukchi						
Killer whale ²	Alaska Resident	0	0	6	0	6	0.20
Narwhal ^{3,4}	Unidentified	0	0	2	0	2	n/a
Harbor porpoise ^{2,4}	Bering Sea	0	0	2	0	2	0.04
Bearded seal ⁵	Beringia	900	6	907	0	907	0.73
Ringed seal ⁵	Arctic	10,198	70	10,269	0	10,269	5.99
Spotted seal	Bering	19	0	19	0	19	0.00
Ribbon seal	Unidentified	1,836	13	1,849	0	1,849	1.00

¹ In most cases, where multiple stocks are being affected, for the purposes of calculating the percentage of the stock impacted, the take is being analyzed as if all authorized takes occurred within each stock. Where necessary, additional discussion is provided in the "Small Numbers Analysis" section.

² UAGI requests authorization of gray whale, humpback whale, fin whale, minke whale, killer whale, and harbor porpoise take equivalent to exposure of one group (Clarke *et al.*, 2016; Clarke *et al.*, 2017; Clarke *et al.*, 2018; Clarke *et al.*, 2019).

³ UAGI requests authorization of two takes of narwhals.

⁴ As noted in Table 1, there is no estimate of abundance available for these species. See "Small Numbers Analysis" section for further discussion.

⁵ Due to rounding, the total estimated Level B harassment does not equal the sum of Level A harassment and Level B harassment.

Although gray whales, fin whales, humpback whales, minke whales, narwhals and harbor porpoises are not expected to occur this far north in the Arctic, we agree with NSF that there is possibility that this activity might encounter these species and thus a conservative number of takes has been authorized based on average group size from yearly Aerial Surveys of Arctic Marine Mammals (ASAMM) (Clark *et al.*, 2016, 2017, 2018, 2019). As described previously in the Changes from the Proposed IHA to Final IHA section, errors in take estimate calculations have been corrected from the notice of proposed IHA (84 FR 18787; May 28, 2021) as shown in Table 7. These changes were made after identifying that the original estimated take numbers used the incorrect Level A harassment ensoufied areas in addition to doubling the estimated exposures within the Level A harassment zone. These corrected, authorized take numbers presented here are either equal to or smaller than those proposed for authorization.

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses. NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat, as well as subsistence uses. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be

effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

In order to satisfy the MMPA's least practicable adverse impact standard, NMFS has evaluated a suite of basic mitigation protocols for seismic surveys that are required regardless of the status of a stock. Additional or enhanced protections may be required for species whose stocks are in particularly poor health and/or are subject to some significant additional stressor that lessens that stock's ability to weather the effects of the specified activities without worsening its status. We reviewed seismic mitigation protocols required or recommended elsewhere (*e.g.*, HESS, 1999; DOC, 2013; IBAMA, 2018; Kyhn *et al.*, 2011; JNCC, 2017; DEWHA, 2008; BOEM, 2016; DFO, 2008; GHFS, 2015; MMOA, 2016; Nowacek *et al.*, 2013; Nowacek and Southall, 2016), recommendations received during public comment periods for previous actions, and the available scientific literature. We also considered recommendations given in a number of review articles (*e.g.*, Weir and Dolman, 2007; Compton *et al.*, 2008; Parsons *et al.*, 2009; Wright and Cosentino, 2015; Stone, 2015b). This exhaustive review and consideration of public comments regarding previous, similar activities has led to development of the protocols included here.

Due to the use of high- and low-energy airgun arrays used within this survey, two separate mitigation protocols are required for use throughout the activity depending on which array is in use (Table 8).

Vessel-Based Visual Mitigation Monitoring

Visual monitoring requires the use of trained observers (herein referred to as visual Protected Species Observers (PSOs)) to scan the ocean surface for the presence of marine mammals. The area to be scanned visually includes primarily the exclusion zone (EZ), within which observation of certain marine mammals requires shutdown of the acoustic source, but also a buffer zone. The buffer zone means an area beyond the EZ to be monitored for the presence of marine mammals that may enter the EZ. During pre-clearance monitoring (*i.e.*, before ramp-up begins), the buffer zone also acts as an extension of the EZ in that observations of marine

mammals within the buffer zone would also prevent airgun operations from beginning (*i.e.*, ramp-up). The standard EZ is 500 m from the edges of the airgun array for high-energy surveys and 100 m for low-energy surveys. For high-energy surveys, the buffer zone encompasses the area at and below the sea surface from the edge of the 0–500 m EZ, out to a radius of 1,000 m from the edges of the airgun array (500–1,000 m). For low-energy surveys, the buffer zone encompasses the area at and below the sea surface from the edge of the 0–100 m EZ, out to a radius of 200 m from the edges of the airgun array (100–200 m).

Visual monitoring of the EZ and buffer zones is intended to establish and, when visual conditions allow, maintain zones around the sound source that are clear of marine mammals, thereby reducing or eliminating the potential for injury and minimizing the potential for more severe behavioral reactions for animals occurring closer to the vessel. Visual monitoring of the buffer zone is intended to (1) provide additional protection to naïve marine mammals that may be in the area during pre-clearance, and (2) during airgun use, aid in establishing and maintaining the EZ by alerting the visual observer and crew of marine mammals that are outside of, but may approach and enter, the EZ.

UAGI must use dedicated, trained, NMFS-approved PSOs. The PSOs must have no tasks other than to conduct observational effort, record observational data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements. PSO resumes shall be provided to NMFS for approval.

At least one of the visual PSOs aboard the vessel must have a minimum of 90 days at-sea experience working in the roles, with no more than 18 months elapsed since the conclusion of the at-sea experience. One visual PSO with such experience shall be designated as the lead for the entire protected species observation team. The lead PSO shall serve as primary point of contact for the vessel operator and ensure all PSO requirements per the IHA are met. To the maximum extent practicable, the experienced PSOs should be scheduled to be on duty with those PSOs with appropriate training but who have not yet gained relevant experience.

During survey operations (*e.g.*, any day on which use of the acoustic source is planned to occur, and whenever the acoustic source is in the water, whether activated or not), a minimum of two visual PSOs must be on duty and conducting visual observations at all

times during daylight hours (*i.e.*, from 30 minutes prior to sunrise through 30 minutes following sunset). Visual monitoring of the EZ and buffer zone must begin no less than 30 minutes prior to ramp-up and must continue until one hour after use of the acoustic source ceases or until 30 minutes past sunset. Visual PSOs shall coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts, and shall conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner.

PSOs shall establish and monitor the EZ and buffer zone. These zones shall be based upon the radial distance from the edges of the acoustic source (rather than being based on the center of the array or around the vessel itself). During use of the acoustic source (*i.e.*, anytime airguns are active, including ramp-up), detections of marine mammals within the buffer zone (but outside the EZ) shall be communicated to the operator to prepare for the potential shutdown of the acoustic source.

During use of the airgun (*i.e.*, anytime the acoustic source is active, including ramp-up), detections of marine mammals within the buffer zone (but outside the EZ) should be communicated to the operator to prepare for the potential shutdown of the acoustic source. Visual PSOs will immediately communicate all observations to the on-duty acoustic PSO(s), including any determination by the PSO regarding species identification, distance, and bearing and the degree of confidence in the determination. Any observations of marine mammals by crew members shall be relayed to the PSO team. During good conditions (*e.g.*, daylight hours; Beaufort sea state (BSS) 3 or less), visual PSOs shall conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the acoustic source and between acquisition periods, to the maximum extent practicable.

Visual PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least one hour between watches and may conduct a maximum of 12 hours of observation per 24-hour period. Combined observational duties (visual and acoustic but not at same time) may not exceed 12 hours per 24-hour period for any individual PSO.

Establishment of Exclusion and Buffer Zones

An EZ is a defined area within which occurrence of a marine mammal triggers

mitigation action intended to reduce the potential for certain outcomes, *e.g.*, auditory injury, disruption of behavioral patterns. The PSOs would establish a minimum EZ with a 500- or 100-m radius, during use of the high-energy and low-energy arrays, respectively, for all species except bowhead whales. The EZ would be based on radial distance from the edge of the airgun array (rather than being based on the center of the array or around the vessel itself).

The EZs are intended to be precautionary in the sense that they would be expected to contain sound exceeding the injury criteria for all cetacean hearing groups, (based on the dual criteria of SEL_{cum} and peak SPL), while also providing a consistent, reasonably observable zone within which PSOs would typically be able to conduct effective observational effort. Additionally, the EZs are expected to minimize the likelihood that marine mammals will be exposed to levels likely to result in more severe behavioral responses. Although significantly greater distances may be observed from an elevated platform under good conditions, we believe that these distances are likely regularly attainable for PSOs using the naked eye during typical conditions.

An extended EZ of 1,500/500 m must be implemented for all bowhead whales during high-energy and low-energy survey effort, respectively, because of their importance to subsistence hunters and protected status. No buffer of this extended EZ is required.

Pre-Clearance and Ramp-Up

Ramp-up (sometimes referred to as “soft start”) means the gradual and systematic increase of emitted sound levels from an airgun array. Ramp-up begins by first activating a single airgun of the smallest volume, followed by doubling the number of active elements in stages until the full complement of an array’s airguns are active. Each stage should be approximately the same duration, and the total duration should not be less than approximately 20 minutes for high-energy airgun arrays. Ramp-up for the low-energy array, which includes only two elements, may be shorter. The intent of pre-clearance observation (30 minutes) is to ensure no protected species are observed within the buffer zone prior to the beginning of ramp-up. During pre-clearance is the only time observations of protected species in the buffer zone would prevent operations (*i.e.*, the beginning of ramp-up). The intent of ramp-up is to warn protected species of pending seismic operations and to allow sufficient time for those animals to leave

the immediate vicinity. A ramp-up procedure, involving a step-wise increase in the number of airguns firing and total array volume until all operational airguns are activated and the full volume is achieved, is required at all times as part of the activation of the acoustic source. All operators must adhere to the following pre-clearance and ramp-up requirements:

- The operator must notify a designated PSO of the planned start of ramp-up as agreed upon with the lead PSO; the notification time should not be less than 60 minutes prior to the planned ramp-up in order to allow the PSOs time to monitor the EZ and buffer zone for 30 minutes prior to the initiation of ramp-up (pre-clearance);

- Ramp-ups shall be scheduled so as to minimize the time spent with the source activated prior to reaching the designated run-in;

- One of the PSOs conducting pre-clearance observations must be notified again immediately prior to initiating ramp-up procedures and the operator must receive confirmation from the PSO to proceed;

- Ramp-up may not be initiated if any marine mammal is within the applicable EZ or buffer zone. If a marine mammal is observed within the applicable EZ or the buffer zone during the 30 minute pre-clearance period, ramp-up may not begin until the animal(s) has been observed exiting the zones or until an additional time period has elapsed with no further sightings (15 minutes for small odontocetes and pinnipeds, and 30 minutes for all mysticetes and all other odontocetes, including large delphinids, such as beluga whales and killer whales);

- Ramp-up shall begin by activating a single airgun of the smallest volume in the array and shall continue in stages by doubling the number of active elements at the commencement of each stage, with each stage of approximately the same duration. Duration shall not be less than 20 minutes for high-energy arrays. The operator must provide information to the PSO documenting that appropriate procedures were followed;

- PSOs must monitor the relevant EZ and buffer zone during ramp-up, and ramp-up must cease and the source must be shut down upon detection of a marine mammal within the applicable EZ. Once ramp-up has begun, detections of marine mammals within the buffer zone do not require shutdown, but such observation shall be communicated to the operator to prepare for the potential shutdown;

- Ramp-up may occur at times of poor visibility, including nighttime, if

appropriate acoustic monitoring has occurred with no detections in the 30 minutes prior to beginning ramp-up. Acoustic source activation may only occur at times of poor visibility where operational planning cannot reasonably avoid such circumstances;

- If the acoustic source is shut down for brief periods (*i.e.*, less than 30 minutes) for reasons other than that described for shutdown (*e.g.*, mechanical difficulty), it may be activated again without ramp-up if PSOs have maintained constant visual and/or acoustic observation and no visual or acoustic detections of marine mammals have occurred within the applicable EZ. For any longer shutdown, pre-clearance observation and ramp-up are required. For any shutdown at night or in periods of poor visibility (*e.g.*, BSS 4 or greater), ramp-up is required, but if the shutdown period was brief and constant observation was maintained, pre-clearance watch of 30 minutes is not required; and

- Testing of the acoustic source involving all elements requires ramp-up. Testing limited to individual source elements or strings does not require ramp-up but does require pre-clearance of 30 min.

Shutdown

The shutdown of an airgun array requires the immediate de-activation of all individual airgun elements of the array. Any PSO on duty will have the authority to delay the start of survey

operations or to call for shutdown of the acoustic source if a marine mammal is detected within the applicable EZ. The operator must also establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the acoustic source to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch. When the airgun array is active (*i.e.*, anytime one or more airguns is active, including during ramp-up) and a marine mammal appears within or enters the applicable EZ, the acoustic source will be shut down. When shutdown is called for by a PSO, the acoustic source will be immediately deactivated and any dispute resolved only following deactivation.

Following a shutdown, airgun activity would not resume until the marine mammal has cleared the EZ. The animal would be considered to have cleared the EZ if it is visually observed to have departed the EZ, or it has not been seen within the EZ for 15 min in the case of small odontocetes and pinnipeds, or 30 min in the case of mysticetes and large odontocetes, including beluga whales and killer whales.

Upon implementation of shutdown, the source may be reactivated after the marine mammal(s) has been observed exiting the applicable EZ (*i.e.*, animal is not required to fully exit the buffer zone where applicable) or following 15 minutes for small odontocetes and pinnipeds, and 30 minutes for

mysticetes and all other odontocetes, including beluga whales and killer whales, with no further observation of the marine mammal(s).

UAGI must implement shutdown if a marine mammal species for which take was not authorized, or a species for which authorization was granted but the takes have been met, approaches the Level A or Level B harassment zones. UAGI must also implement shutdown if any of the following are observed at any distance:

- Any large whale (defined as any mysticete species) with a calf (defined as an animal less than two-thirds the body size of an adult observed to be in close association with an adult); and/or
- An aggregation of six or more large whales.

Passive Acoustic Monitoring (PAM)

NMFS will not require the use of PAM for this activity. PAM would only be applicable to the small portion of the survey (12 percent) using the high-energy array and UAGI has indicated that it would not be practicable to carry the additional monitoring personnel required for implementation of towed PAM. Additionally, species of greatest interest in prescribing use of towed PAM (*e.g.*, sperm whales, beaked whales) are not present in the planned survey area. Further details of this decision are described in the notice of proposed IHA (86 FR 28787; May 28, 2021).

TABLE 8—MITIGATION PROTOCOLS FOR HIGH- AND LOW-ENERGY ARRAYS

Mitigation protocols		
Sources	High-energy (6-airgun array with 3120 in ³ total discharge volume).	Low-energy (2-airgun array with 1040 in ³ total discharge volume).
Visual PSOs	Minimum of 2 NMFS-approved PSOs on duty during daylight hours (30 minutes before sunrise through 30 minutes after sunset); Limit of 2 consecutive hours on watch followed by a break of at least 1 hour; Maximum of 12 hours on watch per 24-hour period.	Minimum of 2 NMFS-approved PSOs on duty during daylight hours (30 minutes before sunrise through 30 minutes after sunset); Limit of 2 consecutive hours on watch followed by a break of at least 1 hour; Maximum of 12 hours on watch per 24-hour period.
Passive acoustic monitoring.	Not Required	Not required.
Exclusion zones	<ul style="list-style-type: none"> • 500 m (all marine mammals) • 1,500 m (Bowhead whales) 	<ul style="list-style-type: none"> • 100 m (all marine mammals). • 500 m (Bowhead whales).
Pre-start clearance	Required; 30-minute clearance period of the following zones: <ul style="list-style-type: none"> • 1,000 m (all marine mammals) • 1,500 m (Bowhead whales) Following detection within zone, animal must be observed exiting or additional period of 15 or 30 minutes.	Required; 30-minute clearance period of the following zones: <ul style="list-style-type: none"> • 200 m (all marine mammals). • 500 m (Bowhead whales). Following detection within zone, animal must be observed exiting or additional period of 15 or 30 minutes.
Ramp-up	Required; duration ≥20 minutes	Required; duration not more than 20 minutes.
Shutdown	Shutdown required for marine mammal detected within defined EZs; Re-start allowed following clearance period of 15 or 30 minutes.	Shutdown required for marine mammal detected within defined EZs; Re-start allowed following clearance period of 15 or 30 minutes.

Vessel Strike Avoidance

1. Vessel operators and crews must maintain a vigilant watch for all protected species and slow down, stop

their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any protected species. A visual observer aboard the

vessel must monitor a vessel strike avoidance zone around the vessel (distances stated below). Visual observers monitoring the vessel strike

avoidance zone may be third-party observers (*i.e.*, PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to (1) distinguish marine mammals from other phenomena, and (2) broadly identify a marine mammal as a bowhead whale, other whale (defined in this context as baleen whales other than bowhead whales), or other marine mammal.

2. Vessel speeds must also be reduced to 10 knots or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel.

3. All vessels must maintain a minimum separation distance of 500 m from bowhead whales. If a whale is observed but cannot be confirmed as a species other than a bowhead whale, the vessel operator must assume that it is a bowhead whale and take appropriate action.

4. All vessels must maintain a minimum separation distance of 100 m from all other baleen whales.

5. All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.*, for animals that approach the vessel).

6. When marine mammals are sighted while a vessel is underway, the vessel shall take action as necessary to avoid violating the relevant separation distance (*e.g.*, attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area). If protected species are sighted within the relevant separation distance, the vessel must reduce speed and shift the engine to neutral, not engaging the engines until animals are clear of the area. This does not apply to any vessel towing gear or any vessel that is navigationally constrained.

7. These requirements do not apply in any case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

We did not identify any mitigation specifically appropriate for habitat. Marine mammal habitat may be impacted by elevated sound levels, but these impacts would be temporary. Prey species are mobile and are broadly distributed throughout the project area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. The specified

activity is of relatively short duration (30 days) and the disturbance will be temporary in nature, similar habitat and resources are available in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations. No Biologically Important Areas (BIAs), designated critical habitat, or other habitat of known significance would be impacted by the planned activities.

We have carefully evaluated the suite of mitigation measures described here and considered a range of other measures in the context of ensuring that we prescribe the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Based on our evaluation of the measures, as well as other measures considered by NMFS described above, NMFS has determined that the mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses (see Unmitigable Adverse Impact Analysis and Determination).

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.*, presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through

better understanding of: (1) Action or environment (*e.g.*, source characterization, propagation, ambient noise); (2) affected species (*e.g.*, life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.*, age, calving or feeding areas).

- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.

- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.

- Effects on marine mammal habitat (*e.g.*, marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).

- Mitigation and monitoring effectiveness.

Vessel-Based Visual Monitoring

As described above, PSO observations would take place during daytime airgun operations. During seismic operations, at least five visual PSOs would be based aboard the R/V *Sikuliaq*. Two visual PSOs would be on duty at all time during daytime hours. Monitoring shall be conducted in accordance with the following requirements:

- The operator will work with the selected third-party observer provider to ensure PSOs have all equipment (including backup equipment) needed to adequately perform necessary tasks, including accurate determination of distance and bearing to observed marine mammals.

PSOs must have the following requirements and qualifications:

- PSOs shall be independent, dedicated, trained visual and acoustic PSOs and must be employed by a third-party observer provider;

- PSOs shall have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant vessel crew with regard to the presence of protected species and mitigation requirements (including brief alerts regarding maritime hazards);

- PSOs shall have successfully completed an approved PSO training course;

- NMFS must review and approve PSO resumes accompanied by a relevant training course information packet that includes the name and qualifications (*i.e.*, experience, training completed, or educational background) of the instructor(s), the course outline or

syllabus, and course reference material as well as a document stating successful completion of the course;

- NMFS shall have one week to approve PSOs from the time that the necessary information is submitted, after which PSOs meeting the minimum requirements shall automatically be considered approved;

- PSOs must successfully complete relevant training, including completion of all required coursework and passing (80 percent or greater) a written and/or oral examination developed for the training program;

- PSOs must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences, a minimum of 30 semester hours or equivalent in the biological sciences, and at least one undergraduate course in math or statistics; and

- The educational requirements may be waived if the PSO has acquired the relevant skills through alternate experience. Requests for such a waiver shall be submitted to NMFS and must include written justification. Requests shall be granted or denied (with justification) by NMFS within one week of receipt of submitted information.

Alternate experience that may be considered includes, but is not limited to (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored protected species surveys; or (3) previous work experience as a PSO; the PSO should demonstrate good standing and consistently good performance of PSO duties. Traditional ecological knowledge is also a relevant consideration.

For data collection purposes, PSOs shall use standardized data collection forms, whether hard copy or electronic. PSOs shall record detailed information about any implementation of mitigation requirements, including the distance of animals to the acoustic source and description of specific actions that ensued, the behavior of the animal(s), any observed changes in behavior before and after implementation of mitigation, and if shutdown was implemented, the length of time before any subsequent ramp-up of the acoustic source. If required mitigation was not implemented, PSOs should record a description of the circumstances. At a minimum, the following information must be recorded:

- Vessel names (source vessel and other vessels associated with survey) and call signs;
- PSO names and affiliations;

- Dates of departures and returns to port with port name;

- Date and participants of PSO briefings;

- Dates and times (Greenwich Mean Time) of survey effort and times corresponding with PSO effort;

- Vessel location (latitude/longitude) when survey effort began and ended and vessel location at beginning and end of visual PSO duty shifts;

- Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any line change;

- Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions changed significantly), including BSS and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon;

- Factors that may have contributed to impaired observations during each PSO shift change or as needed as environmental conditions changed (*e.g.*, vessel traffic, equipment malfunctions); and

- Survey activity information, such as acoustic source power output while in operation, number and volume of airguns operating in the array, tow depth of the array, and any other notes of significance (*i.e.*, pre-clearance, ramp-up, shutdown, testing, shooting, ramp-up completion, end of operations, streamers, etc.).

The following information should be recorded upon visual observation of any protected species:

- Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);

- PSO who sighted the animal;

- Time of sighting;

- Vessel location at time of sighting;

- Water depth;

- Direction of vessel's travel (compass direction);

- Direction of animal's travel relative to the vessel;

- Pace of the animal;

- Estimated distance to the animal and its heading relative to vessel at initial sighting;

- Identification of the animal (*e.g.*, genus/species, lowest possible taxonomic level, or unidentified) and the composition of the group if there is a mix of species;

- Estimated number of animals (high/low/best);

- Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, etc.);

- Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and

size of dorsal fin, shape of head, and blow characteristics);

- Detailed behavior observations (*e.g.*, number of blows/breaths, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior);

- Animal's closest point of approach (CPA) and/or closest distance from any element of the acoustic source;

- Platform activity at time of sighting (*e.g.*, deploying, recovering, testing, shooting, data acquisition, other); and

- Description of any actions implemented in response to the sighting (*e.g.*, delays, shutdown, ramp-up) and time and location of the action.

Reporting

A report will be submitted to NMFS within 90 days after the end of the cruise. The report will describe the operations that were conducted and sightings of marine mammals near the operations. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report will summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities).

The draft report shall also include geo-referenced time-stamped vessel tracklines for all time periods during which airguns were operating. Tracklines should include points recording any change in airgun status (*e.g.*, when the airguns began operating, when they were turned off, or when they changed from full array to single gun or vice versa). GIS files shall be provided in ESRI shapefile format and include the UTC date and time, latitude in decimal degrees, and longitude in decimal degrees. All coordinates shall be referenced to the WGS84 geographic coordinate system. In addition to the report, all raw observational data shall be made available to NMFS. The report must summarize the data collected as described above and in the IHA. A final report must be submitted within 30 days following resolution of any comments on the draft report.

Reporting Injured or Dead Marine Mammals

Discovery of injured or dead marine mammals—In the event that personnel involved in survey activities covered by the authorization discover an injured or dead marine mammal, the UAGI shall report the incident to the Office of Protected Resources (OPR), NMFS, and the NMFS Alaska Regional Stranding Coordinator as soon as feasible. The

report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Vessel strike—In the event of a ship strike of a marine mammal by any vessel involved in the activities covered by the authorization, UAGI shall report the incident to OPR, NMFS and to the NMFS Alaska Regional Stranding Coordinator as soon as feasible. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Vessel's speed during and leading up to the incident;
- Vessel's course/heading and what operations were being conducted (if applicable);
- Status of all sound sources in use;
- Description of avoidance measures/requirements that were in place at the time of the strike and what additional measure were taken, if any, to avoid strike;
- Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;
- Species identification (if known) or description of the animal(s) involved;
- Estimated size and length of the animal that was struck;
- Description of the behavior of the animal immediately preceding and following the strike;
- If available, description of the presence and behavior of any other marine mammals present immediately preceding the strike;
- Estimated fate of the animal (*e.g.*, dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and
- To the extent practicable, photographs or video footage of the animal(s).

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not

reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.*, intensity, duration), the context of any responses (*e.g.*, critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.*, as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, our analysis applies to all species listed in Table 1, given that NMFS expects the anticipated effects of the planned geophysical survey to be similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, NMFS has identified species-specific factors to inform the analysis.

NMFS does not anticipate that injury, serious injury or mortality will occur as a result of UAGI's planned survey, even in the absence of mitigation, and none will be authorized. Similarly, non-auditory physical effects, stranding, and vessel strike are not expected to occur. Although a few incidents of Level A harassment were predicted through the quantitative exposure estimation process (see Estimated Take), NMFS has determined that this is not a realistic result due to the small estimated Level A harassment zones for the species (no greater than approximately 50 m) and the mitigation requirements, and no Level A harassment is authorized. These estimated zones are larger than what would realistically occur, as discussed

in the Estimated Take section. Although no Level A harassment would be expected to occur even absent mitigation, the extended distance exclusion zones for bowhead whales further strengthen this conclusion.

We expect that takes would be in the form of short-term Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity were occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.*, Southall *et al.*, 2007, Ellison *et al.*, 2012). The number of takes for bowhead whales is 0.02 percent of the population.

Marine mammal habitat may be impacted by elevated sound levels, but these impacts would be temporary. Prey species are mobile and are broadly distributed throughout the project area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the relatively short duration (30 days) and temporary nature of the disturbance, the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations. No BIAs, designated critical habitat, or other habitat of known significance would be impacted by the planned activities.

Negligible Impact Conclusions

The survey would be of short duration (30 days of seismic operations), and the acoustic "footprint" of the survey would be small relative to the ranges of the marine mammals that would potentially be affected. Sound levels would increase in the marine environment in a relatively small area surrounding the vessel compared to the range of the marine mammals within the survey area. Short term exposures to survey operations are expected to only temporarily affect marine mammal behavior in the form of avoidance, and the potential for longer-term avoidance of important areas is limited. Short term exposures to survey operations are not likely to impact marine mammal behavior, and the potential for longer-term avoidance of important areas is limited.

The mitigation measures are expected to reduce the number and/or severity of takes by allowing for detection of marine mammals in the vicinity of the vessel by visual observers, and by

minimizing the severity of any potential exposures via shutdowns of the airgun array.

NMFS concludes that exposures to marine mammal species and stocks due to UAGI's survey would result in only short-term (temporary and short in duration) effects to individuals exposed, over relatively small areas of the affected animals' ranges. Animals may temporarily avoid the immediate area, but are not expected to permanently abandon the area. Major shifts in habitat use, distribution, or foraging success are not expected. NMFS does not anticipate the authorized take estimates to impact annual rates of recruitment or survival.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No Level A harassment, serious injury or mortality is anticipated or authorized;
- The activity is temporary and of relatively short duration (30 days);
- The anticipated impacts of the activity on marine mammals would primarily be temporary behavioral changes in the form of avoidance of the area around the survey vessel;
- Location of the survey is further north in the Arctic Ocean and away from areas where most of the species listed in Table 1 have been observed and is north of summer feeding areas and migratory routes.
- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the survey area during the survey to avoid exposure to sounds from the activity;
- The potential adverse effects on fish or invertebrate species that serve as prey species for marine mammals from the survey would be temporary and spatially limited, and impacts to marine mammal foraging would be minimal; and
- The mitigation measures, including visual monitoring, shutdowns, ramp-up, and prescribed measures based on energy size are expected to minimize potential impacts to marine mammals (both amount and severity).

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether the take is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one third of the species or stock abundance, the take is considered to be of small numbers (see 86 FR 5322, January 19, 2021). Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

There are several stocks for which there is no currently accepted stock abundance estimate. These include the fin whale Northeast Pacific stock, the minke whale Alaska stock, the narwhal Unidentified stock, the bearded seal Beringia stock, and the ringed seal Arctic stock. In those cases, qualitative factors are used to inform an assessment of whether the likely number of individual marine mammals taken is appropriately considered small. We discuss these in further detail below.

For all other stocks (aside from those without accepted abundance estimates), the authorized take is less than 7 percent of the best available stock abundance, well less than the one-third threshold for exceeding small numbers (and some of those takes may be repeats of the same individual, thus rendering the actual percentage even lower). We also acknowledge that, given the location of the planned survey activity high in the Arctic Ocean, the stock ranges referenced in the SARs do not always fully overlap the area of the planned survey activity. However, given the very small percentage of the best available stock abundance estimates for these species and the likelihood that the numbers of take authorized would be very small relative to any reasonable population abundance estimate, we conclude these numbers are small.

The stock abundance estimates for fin whale, minke whale, narwhal, bearded seal and ringed seal stocks that occur in the surveys area are unknown, according to the latest 2020 SARs (Muto *et al.*, 2021, Carretta *et al.*, 2021). Therefore, we reviewed other scientific information in making our small numbers determinations for these animals. The abundance estimate of

20,000 minke whales was taken from the Northwest Pacific and Okhotsk Sea (IWC 2021). In addition, as noted previously, partial abundance estimates of 1,233 and 2,020 minke whales are available for shelf and nearshore waters between the Kenai Peninsula and Amchitka Pass and for the eastern Bering Sea shelf, respectively. For the minke whale, these partial abundance estimates alone are sufficient to demonstrate that the authorized take number of 2 is of small numbers. The same surveys produced partial abundance estimates of 1,652 and 1,061 fin whales, for the same areas, respectively, which are similarly sufficient to demonstrate that the authorized take number of 2 is small numbers. The bearded seal estimate of 125,000 was estimated for the U.S. portion of the Bering Sea (Boveng *et al.*, 2017) and 155,000 bearded seals for the entire Alaska stock (Cameron *et al.*, 2010). These partial abundance estimates near the survey are sufficient to demonstrate that the authorized take number of 916 seals is small numbers. Similarly, the ringed seal abundance estimate of 171,418 ringed seals was based on a limited sub-sample from the Bering Sea (Conn *et al.*, 2014 in Muto *et al.*, 2020). This minimal abundance estimate for the Alaska region is enough to demonstrate that a take of 10,373 will be small numbers at 6.05 percent of the Bering Sea population. There is no abundance information available for narwhals. However, the take number is sufficiently small (2) that we assume that it is small relative to any reasonable assumption of likely population abundance for the narwhal. Additionally, the survey area encompasses a very small portion of the hypothesized range of the species.

Based on the analysis contained herein of the activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

In order to issue an IHA, NMFS must find that the specified activity will not have an "unmitigable adverse impact" on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined "unmitigable adverse impact" in 50 CFR 216.103 as an impact resulting from 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 coast and nearshore waters of Alaska are of cultural importance to indigenous peoples for fishing, hunting, gathering, and ceremonial purposes. Marine mammals are legally hunted in Alaskan waters by coastal Alaska Natives. There are seven communities in the North Slope Borough region of Alaska (northwestern and northern Alaska) that harvest seals, including from west to east Point Hope, Point Lay, Wainwright, Utqiagvik, Atkasak, Nuiqsut, and Kaktovik (Ice Seal Committee 2019). Bearded seals are the preferred species to harvest as food and for skin boat coverings, but ringed seals are also commonly taken for food and their blubber (Ice Seal Committee 2019). Ringed seals are typically harvested during the summer and can extend up to 64 km from shore (Stephen R. Braund & Associates 2010). No ribbon seals have been harvested in any of the North Slope Borough communities since the 1960s (Ice Seal Committee 2019). However, the number of seals harvested each year varies considerably.

A subsistence harvest of bowheads and belugas is also practiced by Alaskan Natives, providing nutritional and cultural needs. In 2019, 36 bowhead whales were taken during the Alaskan subsistence hunt (Suydam *et al.*, 2020). Whaling near Utqiagvik occurs during spring (April and May) and autumn, and can continue into November, depending on the quota and conditions. Communities that harvested bowheads during 2019 include Utqiagvik, Gamgell, Kaktovik, Nuiqsut, Point Hope, Point Lay, and Wainwright. Bowhead whales and gray whales are also taken in the aboriginal subsistence hunt in the Russian Federation (Zharikov *et al.*, 2020). During 2019, 135 gray whales and one bowhead whale were harvested at Chukotka.

Beluga whales from the eastern Chukchi Sea stock are an important subsistence resource for residents of the village of Point Lay, adjacent to Kasegaluk Lagoon, and other villages in northwest Alaska. Each year, hunters from Point Lay drive belugas into the lagoon to a traditional hunting location. The beluga whales have been predictably sighted near the lagoon from late June through mid to late July (Suydam *et al.*, 2001). The mean annual number of Beaufort Sea belugas landed

by Alaska Native subsistence hunters in 2011–2015 was 47, and an average of 92 were taken in Canadian waters; the mean annual number of Eastern Chukchi Sea belugas landed by Alaska Native subsistence hunters in 2011–2015 was 67 (Muto *et al.*, 2020).

The survey by UAGI will occur within ~73.5–81.0° N, ~139.5–168° W and over 300 km from the Alaska coastline. Due to the location of the survey being far north in the Arctic and over 200 kilometers from any hunting area or buffer (<http://www.north-slope.org/assets/images/uploads/bowhead%20migration%20map%2021mar03%20distribution.pdf>), no impacts on the availability of marine mammals for subsistence uses are expected to occur. Specifically, based on the survey methods and location planned, there is no reason to believe that there will be any behavioral disturbance of bowhead whales that would also impact their behavior in a manner that would interfere with subsistence use later. Although fishing/hunting would not be precluded in the survey area, a safe distance would need to be kept from R/V *Sikuliaq* and the towed seismic equipment. The principal investigator for the survey presented the action to the Alaska Eskimo Whaling Commission (AEWC) at the July 2020, October 2020, and February 2021 Triannual Meetings. As specifically noted, during the meetings, daily email communications with interested community members would be made from the vessel. Communication may include notice of any unusual marine mammal observations during the survey. Any potential space use conflicts would be further avoided through direct communication with subsistence fishers/hunters during the surveys. Considering the limited time that the planned seismic surveys would take place and the far offshore location of the surveys, no direct interaction with subsistence fishers/hunters would be anticipated. However, UAGI will still be required to remain in constant communication with subsistence fishers/hunters during the surveys.

Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the mitigation and monitoring measures, NMFS has determined that there will not be an unmitigable adverse impact on subsistence uses from UAGI's activities.

National Environmental Policy Act

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by

the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), NSF prepared an Environmental Assessment (EA) to consider the direct, indirect and cumulative effects to the human environment resulting from this marine geophysical survey in the Arctic. NSF's EA was made available to the public for review and comment in relation to its suitability for adoption by NMFS in order to assess the impacts to the human environment of issuance of an IHA to UAGI. In compliance with NEPA and CEQ regulations, as well as NOAA Administrative Order 216–2, NMFS has reviewed the NSF's EA, determined it to be sufficient, and adopted that EA and signed a Finding of No Significant Impact (FONSI). NSF's EA is available at www.nsf.gov/geo/oce/envcomp/, and NMFS' FONSI is available at www.fisheries.noaa.gov/action/incidental-take-authorization-lamont-doherty-earth-observatory-marine-geophysical-survey-2.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

The NMFS OPR ESA Interagency Cooperation Division issued a Biological Opinion under section 7 of the ESA, on the issuance of an IHA to UAGI under section 101(a)(5)(D) of the MMPA by the NMFS OPR Permits and Conservation Division and NSF's funding of the survey. The Biological Opinion concluded that the action is not likely to jeopardize the continued existence of ESA-listed bowhead whales, fin whales, the Western North Pacific population of gray whales, the Mexico DPS and Western North Pacific DPS of humpback whales, bearded seals and ribbon seals, and is not likely to destroy or adversely modify the proposed critical habitat for bearded seals and ringed seals. There is no designated critical habitat in the action area for the other ESA-listed species.

Authorization

As a result of these determinations, NMFS has issued an IHA to UAGI for conducting marine geophysical surveys in the Arctic in August and September,

2021, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: August 11, 2021.

Catherine Marzin,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2021-17683 Filed 8-17-21; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Reopening of Solicitation of Nominations for the Marine Debris Foundation Board of Directors

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Reopening of solicitation of nominations.

SUMMARY: The National Oceanic and Atmospheric Administration published a notice in the **Federal Register** on May 19, 2021 seeking nominations of qualified candidates to be considered for appointment as a member of the Marine Debris Foundation Board of Directors (Board). This solicitation of nominations of qualified persons to the Board is hereby reopened.

DATES: Nominations to the Board of Directors for the Marine Debris Foundation must be received in entirety no later than 11:59 p.m. EDT on August 27, 2021. Nomination packages received after this time will not be considered.

ADDRESSES: All nominations should be emailed (recommended) to marinedebris.foundation@noaa.gov with the subject line "Marine Debris Foundation Nomination," or mailed to Caitlin Wessel, Marine Debris Foundation Nomination, c/o NOAA Disaster Response Center, 7344 Ziegler Blvd., Mobile, AL 36608.

FOR FURTHER INFORMATION CONTACT: Caitlin Wessel, Ph.D., Phone 251-222-0276; Email caitlin.wessel@noaa.gov or visit the NOAA Marine Debris Program website at <https://marinedebris.noaa.gov/who-we-are/marine-debris-foundation>.

SUPPLEMENTARY INFORMATION: Refer to the **Federal Register** Notice of May 19, 2021 (86 FR 27070) and the NOAA Marine Debris Program website at <https://marinedebris.noaa.gov/who-we-are/marine-debris-foundation> for the items that are required parts of the nomination package and additional information.

(Authority: Pub. L. 116-224, 112, Dec. 18, 2020, 134 Stat. 1072)

Scott Lundgren,

Director, Office of Response and Restoration, National Ocean Service.

[FR Doc. 2021-17738 Filed 8-17-21; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB163]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Palmer Station Pier Replacement Project, Antarctica

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from the National Science Foundation (NSF) for authorization to take marine mammals incidental to the Palmer Station Pier Replacement Project in Anvers Island, Antarctica. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than September 17, 2021.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written comments should be submitted via email to ITP.Pauline@noaa.gov.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment

period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT:

Robert Pauline, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the "take" of marine mammals, with certain exceptions. sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other "means of effecting the least practicable adverse impact" on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as "mitigation"); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA) with respect to potential impacts on the human environment.

Accordingly, NMFS plans to adopt NSF's Initial Environmental Evaluation (IEE), which is generally the equivalent of an environmental assessment (EA) under the Antarctic Conservation Act (16 U.S.C. 2401 *et seq.*), provided our independent evaluation of the document finds that it includes adequate information analyzing the effects on the human environment of issuing the IHA.

We will review all comments submitted in response to this notice and the draft IEE prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On December 29, 2020, NMFS received a request from the National Science Foundation (NSF) for an IHA to take marine mammals incidental to construction activities associated with the Palmer Station Pier Replacement Project on Anvers Island, Antarctica. NSF submitted several revisions of the application until it was deemed adequate and complete on July 15, 2021. NSF's request is for take of a small number of 17 species of marine mammals by Level B harassment and/or

Level A harassment. Neither NSF nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

The purpose of the project is to construct a replacement pier at Palmer Station on Anvers Island, Antarctica for the United States Antarctic Program. It is severely deteriorated, and needs to be replaced as soon as possible.

Construction of the replacement pier and removal of the existing pier will require down-the-hole (DTH) pile installation, and vibratory pile removal. Limited impact driving will occur only to proof piles after they have been installed. The proposed project is expected to take up to 89 days of in-water work and will include the installation of 52 piles and removal of 36 piles. Construction is expected to begin no later than November 2021, depending on local sea ice conditions, and would be completed by mid-April 2022. The pile driving and removal activities can result in take of marine mammals from sound in the water which results in behavioral harassment or auditory injury. Note that hereafter (unless otherwise specified) the term "pile driving" is used to refer to both pile installation (including DTH pile installation) and pile removal.

Dates and Duration

The work described here is likely to begin in October or November 2021 and would be completed by mid-April 2022 with demobilization occurring no later than June of 2022. The construction

season is limited due to ice and weather. Construction work cannot begin until the sea ice has vacated Hero Inlet and work must be completed prior to the return of sea ice so that personnel and equipment can be safely demobilized. The proposed IHA would be effective for a period of one year from October 1, 2021 through September 30, 2022. In-water activities will occur during daylight hours only. Work would be conducted 7 days per week for 12 hours (hr) per day and up to 89 days of in-water construction is anticipated.

Specific Geographic Region

The activities would occur at Palmer Station on Hero Inlet, between Gamage Point and Bonaparte Point on the southwestern coast of Anvers Island in the Antarctica Peninsula (Figure 1). The coordinates for the station are: 64°46' S, 64°03' W. Substrate at the project location consists of solid rock. In addition to the pier, there are several buildings, plus two large fuel tanks, and a helicopter pad. The area frequently experiences high winds, up to 130 kilometers (km) per hour, or greater. Palmer Station lies outside the Antarctic Circle, so there are 19 hours of light and 5 hours of twilight at the height of austral summer and only 5 hours of daylight each day in the middle of austral winter. Hero Inlet is a narrow inlet (approximately 135 meters (m) wide) along the southwest side of Anvers Island. Maximum observed tidal range is 2.5 m with mean sea level at 0.72 m. The shoreline and upland area is generally rocky or exposed bedrock. Ice cliffs rise above the station.

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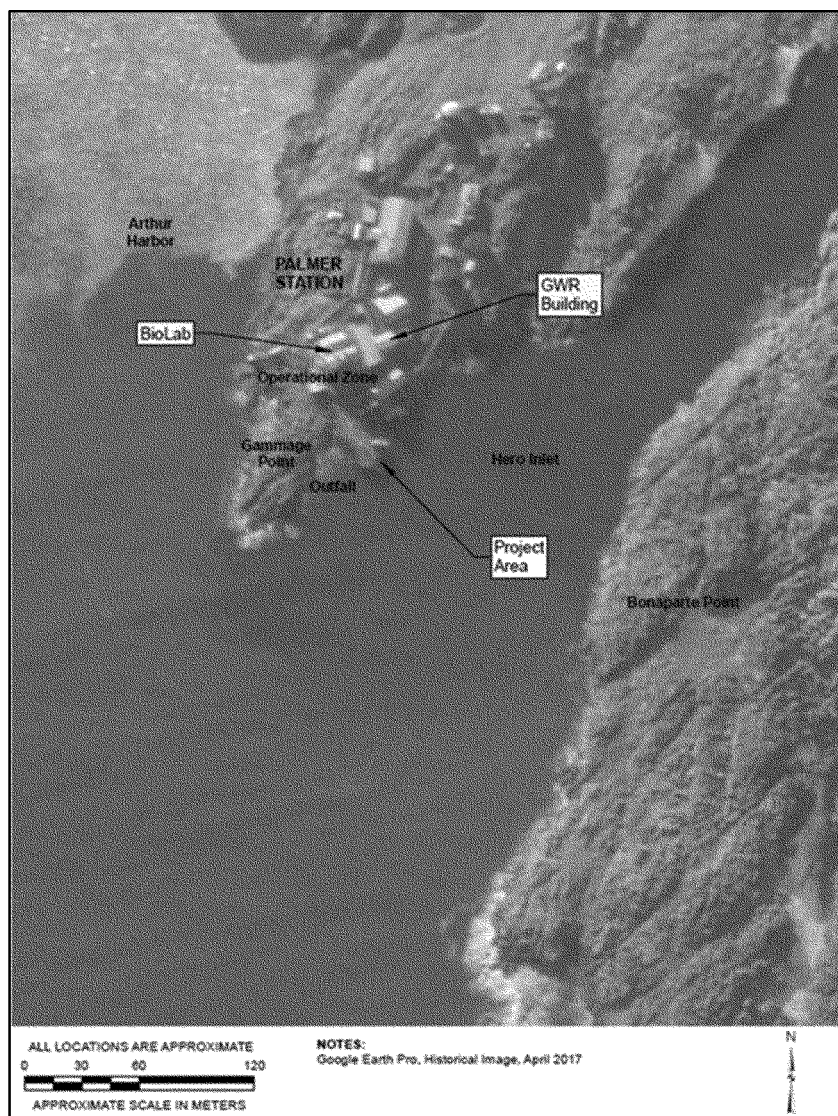


Figure 1. Map of Proposed Project Area

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Detailed Description of Specific Activity

The existing pier at Palmer Station consists of a sheetpile bulkhead backfilled with gravel and cobble that was built in 1967. It is severely deteriorated, and needs to be replaced as soon as possible.

This project would replace the existing pier with a new steel pipe pile supported concrete deck pier, new modern energy absorbing fender system and on-site power and lighting. Work on the fendering system would be above water. In-water work with the potential to produce underwater noise includes demolition of the existing pier,

construction of the new pier and installation of wave attenuator piles. While piles for the wave attenuator will be installed in this project, the wave attenuator itself would be installed later. (NMFS does not expect installation of the wave attenuator to result in take.)

The existing bulkhead pier must be demolished prior to construction of the new pier. The existing sheetpile cofferdam bulkhead would be demolished and the sheets would be removed by a vibratory hammer or cut off at the mudline. Sheet pile removed from the pier cell would be loaded onto the material barge for disposal. A pier cell is a structure that has hollow sections (*i.e.*, cells).

New pile installation would include steel gravel-filled pipe piles as outlined in Table 1. The deck and pile caps for the pier are supported by the piles, which are installed in holes (sockets) created in the shallow bedrock by the DTH systems. Support vessels, including a tugboat, one stationary barge, a temporary floating construction platform, a 16-ft. (5-m) skiff and one 200 horsepower work boat would be used for the duration of the project to complete in-water work. A separate gravel barge would deliver material at the beginning of the project, but would only be onsite for approximately 3 days.

TABLE 1—PILE SUMMARY

Structure	Size and type of pile	Socket depth (feet [ft])	Number of piles
Pier Abutment	32 or 36-in. diameter steel pile in approximate 38-in. diameter holes	30	4.
Pier	36-in. steel pile in approximate 38-in. diameter holes	20	Up to 18. ^a
Retaining Wall	H pile inserted in 24-in. diameter hole	10	Up to 9. ^a
Wave Attenuator Piles	24-in. steel pile	20	2.
Rigid Hull Inflatable Boat Fender	24-in. steel pile	20	3.
Template Piles (temporary)	24-in. steel pile	10	32. ^b
Sheetpile Removal	3/8-in	0	20.

^a Includes 2 piles as a contingency for design flexibility.
^b 16 of these piles are removed once they are no longer needed as templates.

The primary source of underwater noise that may result in takes during construction would be from the installation and removal of piles to support the pier and fenders. Table 2 shows project components and activities that could result in the take of marine mammals.

TABLE 2—PROJECT COMPONENTS: POTENTIAL FOR MARINE MAMMAL TAKE

Project component	Equipment	Potential for marine mammal take (yes/no)
Pile/Sheetpile Removal	Excavator and loader operated above water	No.
	Crane operated above water	No.
	Vibratory hammer	Yes.
	Underwater cutting tool ¹	Yes.
Pile Installation	Crane operated above water	No.
	DTH drill	Yes.
	Impact hammer	Yes.
	Vibratory hammer	Yes.
Anode Protection	Pneumatic hydrogrinder or needle scaler ²	Yes.
Rock chipping (optional)	Hoe ram	Yes. ³

¹ Underwater cutting tool operation, if necessary, would occur on the same days as vibratory extraction. Estimated take associated with cutting tool operation was calculated by utilizing higher underwater source levels associated with vibratory extraction.
² These tools scrape off surfaces for rust, paint, etc. Use of these tools would be limited and would occur once pile installation is complete. Underwater source levels are estimated at 146 dB at 10m and have been accounted for in the take estimate.
³ Rock chipping may not be necessary. However if it does occur it would occur on the same days as DTH pile installation.

Piles would be socketed in place since the substrate comprises rocky or exposed bedrock. This involves drilling and hammering into the rock to create a socket hole deeper and larger than the pile diameter. The primary technique for creating the socket holes and their piles would be by DTH pile installation. DTH installation uses both rotary and hammering actions on a drill bit (*i.e.*, like a hammer drill hand tool) to create a hole in the bedrock or sediment. It uses the rotation of the drill system and a (typically pneumatic) hammering mechanism to break up rock to create a hole. Since construction techniques could vary depending on specific site conditions, a small impact hammer may also need to be used at the end of the process to firmly seat the pile in the hole. This may require no more than 10 strikes. It is unlikely that a vibratory hammer would be used to install piles.

Once the pile is set, the remaining void space is filled with a high-performance cement-based sealing grout. Temporary template piles used during construction would be removed with a vibratory hammer or cut off at the mudline. Approximately one to two piles would be installed over a 12-hour work day. As a precautionary measure, it is assumed that two installation activities would be occurring at the same time (*i.e.*, simultaneous). The main method of pile installation would be by DTH. Two DTH systems would be available on site and could be used simultaneously. One vibratory hammer would possibly be used to remove existing piles, and one impact hammer could be used to proof piles. Rock chipping may be required to ensure accurate pile location and alignment with the sea bottom at pile locations. Rock chipping involves the use of excavators fitted with hydraulic

“breakers” or powerful percussion hammers used to break up large concrete structures. If rock chipping is necessary, it would likely occur prior to but on the same days as DTH pile installation. The project design includes installation of anode corrosion protection for the major submerged steel components. Divers would install aluminum alloy anodes below the waterline by welding and using a pneumatic hydrogrinder, needle scaler, or similar equipment. They would use these tools to scrape rust, paint, etc. off surfaces. This activity would occur only after pile installation is complete. The hydrogrinder or needle scaler would only be used approximately one hour per day over an 18-day period. Table 3 provides the number of piles and the estimated number of days of installation.

TABLE 3—PILE INSTALLATION AND REMOVAL DURATION

Pile type	Number of piles	Total days of installation ¹
36-in. piles ² (pier Bents 2, 3, and 4)	Up to 18	47
32-in. piles (pier abutment Bent 1)	4	
24-in. RHIB (rigid hull inflatable boat) fender	3	16
24-in. template piles	16	
24-in. retaining wall	2	
24-in. H piles (retaining wall)	Up to 9	
Pile Removal (24-in.)	16	4
Sheetpile Removal	20	4
Anode Installation	0	18
Rock chipping	0	
	Up to 88	89

¹ This is a conservative estimate. It is possible that 24-in. piles may be driven on the same day as 36-in. piles. If this occurs, overall days may be reduced for pile installation.

² For the purposes of calculating take, there is reference to Scenario 1A which involves pile installation of two 36-in piles simultaneously. In this table, Scenarios 1 and 1A are synonymous in terms of representing the number of estimated days for installation.

Description of Marine Mammals in the Area of Specified Activities

Table 4 lists all species or stocks for which take is expected and proposed to be authorized for this action, and summarizes best available information on the population or stock, including regulatory status under the MMPA and Endangered Species Act. For taxonomy, we follow Committee on Taxonomy (2020). Marine mammals in the Project Area do not constitute stocks under U.S. jurisdiction; therefore, there are no stock assessment reports. Additional

information on these species may be found in Section 3 of NSF’s application.

For species occurring in United States Antarctic Marine Living Resources (AMLR) survey area of the Southern Ocean, the International Union for the Conservation of Nature (IUCN) status is provided. The IUCN systematically assesses the relative risk of extinction for terrestrial and aquatic plant and animal species via a classification scheme using five designations, including three threatened categories (Critically Endangered, Endangered, and

Vulnerable) and two non-threatened categories (Near Threatened and Least Concern) (www.iucnredlist.org/; accessed June 10, 2021). These assessments are generally made relative to the species’ global status, and therefore may have limited applicability when marine mammal stocks are defined because we analyze the potential population-level effects of the specified activity to the relevant stock. However, where stocks are not defined, IUCN status can provide a useful reference.

TABLE 4—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF THE PROJECT AREA

Common name	Scientific name	Stock ²	ESA/MMPA/IUCN status ³	Abundance (CV) ⁴
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)				
Family Balaenidae (right whales):				
Southern right whale	<i>Eubalaena australis</i>		E/D/LC	1,755 (0.62). ⁵
Family Balaenopteridae (rorquals):				
Humpback whale	<i>Megaptera novaeangliae australis</i>		E/D/LC	9,484 (0.28). ⁵
Antarctic minke whale	<i>Balaenoptera bonaerensis</i>		-/NT	18,125 (0.28). ⁵
Fin whale	<i>B. physalus quoyi</i>		E/D/VU	4,672 (0.42). ⁵
Blue whale	<i>B. musculus musculus</i>		E/D/EN	1,700. ¹³
Sei whale	<i>Balaenoptera borealis</i>		E/D/EN	626. ¹⁴
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)				
Family Physeteridae:				
Sperm whale	<i>Physeter macrocephalus</i>		E/D/VU	12,069 (0.17). ⁷
Family Ziphiidae (beaked whales):				
Arnoux’s beaked whale	<i>Berardius arnuxii</i>		/DD	Unknown.
Southern bottlenose whale	<i>Hyperoodon planifrons</i>		-/LC	53,743 (0.12). ⁸
Family Delphinidae:				
Hourglass dolphin	<i>Lagenorhynchus cruciger</i>		-/LC	144,300 (0.17). ⁹
Killer whale	<i>Orcinus orca</i> ¹		-/DD	24,790 (0.23). ⁸
Long-finned pilot whale	<i>Globicephala melas edwardii</i>		-/LC	200,000 (0.35). ⁹
Order Carnivora—Superfamily Pinnipedia				
Family Otariidae (eared seals and sea lions):				
Antarctic fur seal	<i>Arctocephalus gazella</i>	South Georgia	-/LC	2,700,000. ¹⁰
Family Phocidae (earless seals):				
Southern elephant seal	<i>Mirounga leonina</i>	South Georgia	-/LC	401,572. ¹¹
Weddell seal	<i>Leptonychotes weddellii</i>		-/LC	500,000–1,000,000. ¹²
Crabeater seal	<i>Lobodon carcinophaga</i>		-/LC	5,000,000–10,000,000. ¹²
Leopard seal	<i>Hydrurga leptonyx</i>		-/LC	222,000–440,000. ¹²

¹ Three distinct forms of killer whale have been described from Antarctic waters; referred to as types A, B, and C, they are purported prey specialists on Antarctic minke whales, seals, and fish, respectively (Pitman and Ensor, 2003; Pitman *et al.*, 2010).

² For most species in the AMLR, stocks are not delineated and entries refer generally to individuals of the species occurring in the research area.

³ Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Any species listed under the ESA is automatically designated under the MMPA as depleted. IUCN status: Endangered (EN), Vulnerable (VU), Near Threatened (NT), Least Concern (LC), Data Deficient (DD).

⁴ CV is coefficient of variation. All abundance estimates, except for those from Reilly *et al.*, (2004) (right, humpback, minke, and fin whales), are for entire Southern Ocean (*i.e.*, waters south of 60°S) and not the smaller area comprising the Southwest Fisheries Science Center (SWFSC) research area.

⁵ Abundance estimates reported in Reilly *et al.*, (2004) for the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) survey area from 2000. Surveys include Antarctic Peninsula (473,300 km²) and Scotia Sea (1,109,800 km²) strata, which correspond roughly to SWFSC's Antarctic Research Area (ARA), as reported by Hewitt *et al.*, (2004).

⁶ Southern Ocean abundance estimate (Branch *et al.*, 2007).

⁷ Southern Ocean abundance estimate (IWC, 2001 in Whitehead, 2002).

⁸ Southern Ocean abundance estimate from circumpolar surveys covering 68 percent of waters south of 60°S from 1991–98 (Branch and Butterworth, 2001).

⁹ Southern Ocean abundance estimate derived from surveys conducted from 1976–88 (Kasamatsu and Joyce, 1995).

¹⁰ South Georgia abundance estimate; likely >95 percent of range-wide abundance (Forcada and Staniland, 2009). Genetic evidence shows two distinct population regions, likely descended from surviving post-sealing populations at South Georgia, Bouvetøya, and Kerguelen Islands (Wynen *et al.*, 2000; Forcada and Staniland, 2009). Individuals from the South Georgia population (including breeding populations at the South Orkney and South Shetland Islands, which are within the ARA) are likely to occur in the ARA.

¹¹ Four genetically distinct populations are recognized: the Peninsula Valdés population in Argentina, the South Georgia population in the South Atlantic Ocean, the Kerguelen population in the South Indian Ocean and the Macquarie population in the South Pacific Ocean (Slade *et al.*, 1998; Hoelzel *et al.*, 2001). Animals occurring in ARA are likely to belong to South Georgia population, which includes subpopulations at South Georgia Island (>99 percent of population) and at the South Orkney and South Shetland Islands; South Georgia population abundance estimate from 2001 (McMahon *et al.*, 2005).

¹² Range-wide abundance estimates (Thomas and Terhune, 2009; Bengtson, 2009; Rogers, 2009).

¹³ Southern Ocean abundance estimate (Branch *et al.*, 2007). CI is confidence interval.

¹⁴ South of 60°S.

Antarctic Minke Whale

Antarctic minke whales are similar in shape and coloration to the more global species of minke whale (*B. acutorostrata*). The two species differ in relative size and shape of several cranial features, and Antarctic minke whales lack the distinct white flipper mark of the more common minke whale.

The seasonal distribution and migration patterns of nearly all populations of minke whales are poorly understood (Risch *et al.*, 2019). Antarctic minke whales are abundant from 60°S to the ice edge during the austral summer then retreat in the austral winter to breeding grounds in mid-latitudes in the Pacific and other locations off Australia and South Africa. Antarctic minke feed mainly on euphausiids (krill (*Euphausia superba*)). This species is highly associated with sea ice and is generally less abundant in ice-free waters. In general, minke whales are commonly observed alone or in small groups of two or three individuals. Aggregations of up to 400 may form on occasion in high latitudes. During the feeding season, mature females are found closer to the ice than immature females, and immature males are more solitary than mature males.

Over the period January 21, 2019 through March 31, 2020, one minke whale was observed during bird observation studies at Palmer Station in Arthur Harbor, which is on the other side of the peninsula separated from Hero Inlet. The whale was observed feeding about 300 m offshore. A lead Principal Investigator studying marine mammals as part of the Long-Term Ecological Research Program at Palmer Station notes minke whales are common within a few miles of the station (Ari Friedlander, personal communication).

Fin Whale

Fin whales are closely related to blue and sei whales. Northern and southern

populations remain separated leading to genetic isolation of the populations. The fin whale is found in most large water masses of the world, from tropical to polar regions. However, in the most extreme latitudes individuals may be absent near the ice limit. Overall, fin whale densities in the southern hemisphere tend to be higher outside the continental slope than inside it.

Fin whales feed on an assortment of prey items, depending on their availability (Kawamura 1980; as cited in Wursig *et al.*, 2018); their diet varies with season and locality. Southern Hemisphere fin whales have a diet of almost exclusively krill, and other planktonic crustaceans. In the Southern Hemisphere, fin whales seasonally migrate north to south; they feed in the summer at high latitudes and breed and fast in the winter at low latitudes.

One fin whale was recently seen within a few miles of the station (Ari Friedlander, personal communication).

Blue Whale

Blue whales in the Southern Hemisphere are on average larger than those in the Northern Hemisphere. Blue whales are a cosmopolitan species with North Atlantic, North Pacific, and Southern hemisphere populations. They were historically most abundant in the Southern Ocean, but are very rare today in the Project Area. Due to food availability they are found predominantly offshore. Blue whales feed almost exclusively on euphausiids in areas of cold water upwelling.

Sei Whale

Sei whales inhabit all ocean basins; they are oceanic and not commonly found in shelf seas. Sei whales migrate seasonally, spending the summer months feeding in the subpolar higher latitudes and returning to the lower latitudes to calve in winter. In the Southern Hemisphere, they are rarely found as far south as blue, fin, and

minke whales, with summer concentrations mainly between the subtropical and Antarctic convergences (between 40°S and 50°S). Sei feed on copepods, euphausiids, shoals of fish, and squid if they are encountered.

Hourglass Dolphin

Hourglass dolphins are pelagic and circumpolar in the Southern Ocean; they are found in Antarctic and sub-Antarctic waters. Most sightings of live hourglass dolphins reflect observer effort, and are centered on the Antarctic convergence with most sightings from the Drake Passage. Hourglass dolphins often feed in large aggregations of seabirds such as great shearwaters and black-browed albatrosses, and in plankton slicks (White *et al.*, 1999; as cited in Wursig *et al.*, 2018). Their prey items include small fish (about 2.4 g and a length of 55 mm), small squid, and crustaceans. They are believed to feed in surface waters.

Migratory movements of this species are not well known. It is thought that hourglass dolphins from the Antarctic convergence zone and the continental shelf break may move into sub-Antarctic waters in winter. Thus, the range of the species thus probably shifts north and south with the seasons (Carwardine 1995; as cited in Wursig *et al.*, 2018). Although oceanic, hourglass dolphins are often observed near islands and banks, in areas with turbulent waters; they have been observed in the Project Area (Ari Friedlander, personal communication).

Humpback Whale

Humpback whales are distributed throughout the world. They are highly migratory, spending spring through fall on feeding grounds in mid- or high-latitude waters, and wintering on calving grounds in the tropics, where they do not eat (Dawbin 1966; as referenced in Wursig *et al.*, 2018). Seven populations of humpback whales are

found in the Southern hemisphere and feed throughout the waters off Antarctica. In the Southern Hemisphere, humpback whales feed in circumpolar waters and migrate to breeding grounds in tropical waters to the north. Seven breeding populations are recognized by the International Whaling Commission in the Southern Hemisphere, and these are linked to six feeding areas in the Antarctic. Bettridge *et al.*, (2015) identify the southeast Pacific breeding stock as feeding in waters to the west of the Antarctic Peninsula where Palmer station is located. These animals breed in the Pacific-Central America waters.

Humpback whales are considered generalists, feeding on euphausiids and various species of small schooling fish. They appear to be unique among large whales in their use of bubbles to corral or trap these schooling fish.

Humpback whales are the most common whale seen within a few miles of the station (Ari Friedlander, personal communication). From January 21, 2019 through March 31, 2020, marine mammal sightings have been recorded during bird observation studies at Palmer Station. On January 23, 2019, three humpback whales (two adults and one juvenile) were observed feeding off Torgersen Island, and one adult and one juvenile were observed feeding in Arthur Harbor on January 26, 2019. Several groups of up to four individuals (likely adults and juveniles) were observed feeding in Arthur Harbor in early February 2019. No humpbacks were observed after February 12. At the end of May 2019, two humpback whales were again observed near Bonaparte Point, with no other sightings until the end of December 2019 when one humpback was observed feeding in Arthur Harbor. In late December 2019 through early February 2020, individual whales or groups of two adults and possibly a juvenile feeding in Arthur Harbor were recorded on 10 separate occasions. A large group of five whales (four adults and a juvenile) was observed in Arthur Harbor on March 3, 2020. This was the last sighting recorded.

Killer Whale

The killer whale is found in all the world's oceans and most seas. It is the largest member of the family Delphinidae and has very distinctive black-and-white coloration. Antarctic killer whales make periodic rapid long-distance migrations to subtropical waters, possibly for skin maintenance (Durban and Pitman 2011; as referenced in Wursig *et al.*, 2018). Killer whales are social animals that are usually observed traveling in groups containing a few to

20 or more individuals. Reports of larger groups usually involve temporary aggregations of smaller, more stable social units.

Currently only one species of killer whale is recognized (*O. orca*), but it is likely that some of genetically distinct forms found in different regions of the world represent distinct species (Wursig *et al.*, 2018). In the Antarctic, five distinct forms of killer whale have been identified: Types A, B1, B2, C, and D. They differ in coloration, morphology, and in some cases diet (Pitman and Ensor 2003). Types B1 and B2 are the most common form observed around the Antarctic Peninsula and Anvers Island (Durban *et al.*, 2016).

Killer whales prey on a wide range of vertebrates and invertebrates; they have no natural predators other than humans. It is the only cetacean that routinely preys upon marine mammals, with attacks or kills documented for 50 different species. Mammalian taxa that are prey of killer whales include other cetaceans—both mysticetes and odontocetes—pinnipeds, sirenians, mustelids and, on rare occasions, ungulates. A variety of fish species are also important food of killer whales. In the Antarctic, killer whales in open water prey on Antarctic minke whales, seals, and fish.

Killer whales are commonly observed within a few miles of the station (Ari Friedlander, personal communication).

Long-Finned Pilot Whale

Long-finned pilot whales inhabit the cold temperate waters of both the North Atlantic and the Southern Ocean. They are circumpolar in the Southern Hemisphere and occur as far north as 14°S in the Pacific and south to the Antarctic Convergence (Olson 2009). Pilot whales are found in both nearshore and pelagic environments. Pilot whales are generally nomadic, but are highly social and are usually observed in schools of several to hundreds of animals. They also have been observed in mixed species aggregations. Their diet consists mostly of squid and other cephalopods, with smaller amounts of fish. Pilot whales are known to dive deep for prey; the maximum dive depth measured is about 1,000 m.

Arnoux's Beaked Whale

Arnoux's beaked whales inhabit vast areas of the Southern Hemisphere, between 24°S and Antarctica. They are a deep diving species and can be found in areas of heavy ice cover. Little is known of the diet of Arnoux's beaked whales but one individual's stomach was found to be mostly filled with squid beaks (Wursig *et al.* 2018). Arnoux's

beaked whales often occur in groups of 6–10 and occasionally up to 50 or more (Balcomb 1989). Arnoux's beaked whales have been observed in the Project area. Because they are heavily ice-associated Arnoux's, beaked whales may be directly affected by loss of sea ice due to climate change.

Southern Bottlenose Whale

Southern bottlenose whales are widely distributed throughout the Southern Hemisphere, mainly south of 30°S, and are most common between 58°S and 62°S. Bottlenose whales seem to prefer deeper waters and, like other beaked whales, they make regular deep dives to forage. Stomach content analyses of six southern bottlenose whales show that this species feeds primarily on squid (MacLeod *et al.*, 2003). Bottlenose whales are typically observed in small groups of up to 10 individuals, though groups of up to 20 animals of mixed age/sex classes have been reported. Social behaviors have not been studied in southern bottlenose whales.

Southern Right Whale

Southern right whales are found between 20°S and 60°S. Right whales are "skimmers" (Baumgartner *et al.*, 2007; as cited in Wursig *et al.*, 2018). They feed offshore in pelagic regions in areas of high productivity by swimming forward with the mouth agape. Feeding can occur at or just below the surface, where it can be observed easily, or at depth. At times, right whales apparently feed very close to the bottom, because they are observed to surface at the end of an extended dive with mud on their heads. Typical feeding dives last for 10–20 min. It is likely that krill comprise a high proportion of the diet in southern right whales.

Sperm Whale

Sperm whales are widely distributed, but distribution of the sexes are different. Female sperm whales almost always inhabit water deeper than 1,000 m and at latitudes less than 40°S, corresponding roughly to sea surface temperatures greater than 15°C. Sperm whales dive to about 600 m below the surface where they hunt primarily for squid. Distribution and relative abundance can vary in response to prey availability, most notably squid (Jaquet & Gendron 2002).

Large males from high latitudes can be found in almost any ice-free deep water. Therefore, any sperm whales encountered in Antarctic waters are highly likely to be male. They are more likely to be sighted in productive waters, such as those along the edges of

continental shelves. Sperm whales have low birth rates, slow growth and high survival rates.

Antarctic Fur Seal

Antarctic fur seals have a circumpolar distribution. They are found from the Antarctic continent to the Falkland Islands. Land-based breeding strongly influences the distribution of females and their foraging ecology. Lactating females are restricted to foraging in the waters immediately surrounding the breeding beaches, whereas males can disperse after mating. Female distribution expands after breeding as they leave rookeries.

Antarctic krill dominates the diet of Antarctic fur seals in the vicinity of the Project Area. Penguins are occasionally taken by Antarctic fur seal bulls. Killer whales are likely the main predator of the species, but leopard seals are thought to limit the population growth at Elephant Island in the South Shetland Islands. Large bulls of other species also prey on pups where species coexist.

Over three seasons from 2019 through 2020 (*i.e.*, two Antarctic summers and one winter), marine mammal sightings have been recorded during daily bird observation studies at Palmer Station. A total of 73 fur seals were observed either hauled out or swimming in Hero Inlet during the Antarctic summer months between January and March 2019. Over a longer summer period between October 2019 and March 2020, there were 242 seals observed in Hero Inlet, with the majority of seals hauled out (see Table 6–1 in application). During the winter months between March and October 2019, 70 seals were observed in Hero Inlet. Fewer fur seals were observed over the same 2019–2020 months in Arthur Harbor. See Section 6 of the application for additional details on seal observations in the project vicinity (NSF, personal communication).

Crabeater Seal

Crabeater seals have a circumpolar Antarctic distribution; they spend the entire year in pack ice. They move over large distances with the annual advance and retreat of pack ice. Although they can be found anywhere within the pack ice zone, they are typically found at the edge of the continental shelf, as well as in the marginal ice zone (Burns *et al.*, 2004 and Southwell *et al.*, 2005; as referenced in Wursig *et al.*, 2018). Crabeater seals sometimes congregate in large groups of up to several hundred, which might be associated with general patterns of seasonal movement or foraging. As with other Antarctic seals, crabeater seals have a daily haul out

pattern in summer that generally involves hauling out on ice floes during the middle of the day (Bengtson and Cameron, 2004; as referenced in Wursig *et al.*, 2018), though usually less than 80 percent are hauled out on the ice at the same time.

Antarctic krill is the primary prey item for crabeater seals, constituting over 95 percent of their diet. They also eat small quantities of fish and squid (Ørntland, 1977; as referenced in Wursig *et al.*, 2018). Crabeater seals do not appear to seasonally switch prey. During daily nocturnal foraging periods in summer, crabeater seals will nearly continuously dive for up to 16 h at a time.

Over three seasons (*i.e.*, two Antarctic summers and one winter) from January 21, 2019 through March 31, 2020, marine mammal sightings have been recorded during bird observation studies at Palmer Station. Crabeater seals were commonly observed individually or in small groups lying on the ice in Arthur Harbor and Hero Inlet in late January and February of 2019; the frequency of sightings decreased by March. Groups of up to four individuals were observed in or near the Project Area in early April of 2019, some were lying on the floating dock. Groups of crabeater seals were observed swimming in Hero Inlet near Gamage Point in April and early May of 2019. No crabeater seals were recorded in June, but in early July of 2019 groups of two seals and individuals were observed on the ice at Arthur Harbor and Hero Inlet, and on the shore at Bonaparte Point. No crabeater seals were observed from mid-July to mid-October of 2019. Observations of crabeater seals increased in Arthur Harbor frequency into November of 2019, with sightings continuing into December. However, from January of 2020 through March of 2020, crabeater seals were only observed on nine occasions; this was less frequent than sightings recorded from January to March of 2019 (NSF, personal communication).

Southern Elephant Seal

Southern elephant seals are the largest of all pinnipeds. Southern elephant seals can be divided into three distinct stocks: Maguire Island, Iles Kerguelen, and South Georgia, the latter of which is relevant to the Project Area. There is some separation of feeding areas between the sexes, with males tending to feed more in continental shelf waters, while females either use ice-free waters broadly associated with the Antarctic Polar Front, or the marginal ice zone, moving northward as the ice expands. Elephant seals prey on deepwater and

bottom dwelling organisms, including fish, squid, crab, and octopus. They are extraordinary divers with some dive depths exceeding 1,500 m and lasting up to 120 minutes.

Over three seasons (two Antarctic summers and one winter) from January 21, 2019 through March 31, 2020, one elephant seal was observed lying on shore near Palmer Station in early March of 2019. No other seals were observed again until October of 2019 when on six days over the period October 8 to 19, 2019 a single seal was observed lying on the ice in Arthur Harbor. Additional sightings were noted in November and December 2019 in Hero Inlet. Sightings increased from January 6 to February 10, 2020, when elephant seals were observed at Bonaparte Point as individuals or in groups as large as 7 nearly every day and sometimes several times a day. No elephant seals were observed after February 10, 2020. This is noticeably different than 2019, when no elephant seals were observed in January or February (NSF, personal communication).

Leopard Seal

The leopard seal (*Hydrurga leptonyx*) is the largest Antarctic pack ice seal. Leopard seals are solitary pinnipeds, and are widely dispersed at low densities on the circumpolar Antarctic pack ice (Rogers *et al.*, 2013; as cited in Wursig *et al.*, 2018). Most of the leopard seal population remains within the pack ice, but when the sea ice extent is minimal, leopard seals are restricted to coastal habitats (Meade *et al.*, 2015; as cited in Wursig *et al.*, 2018).

These seals prey on penguins, other marine mammals, and zooplankton; this combination of apex predator and planktivore is unique for marine mammals. Due to the size of their mouth, leopard seals can take large-bodied prey including crabeater, Weddell, southern elephant seals, and fur seals.

During three seasons (two Antarctic summers and one winter) of observation studies at Palmer Station, single leopard seals were occasionally observed lying on the ice in Arthur Harbor or swimming in Hero Inlet starting in late January until April of 2019. One additional sighting was recorded in July, and no leopard seals were observed again until November 19, 2019, when three were observed on the ice in Arthur Harbor. Occasional sightings continued from November 2019 through March of 2020. On March 31, a leopard seal was observed feeding on a crabeater seal in Hero Inlet (NSF, personal communication).

Weddell Seal

Weddell seals are large pinnipeds weighing up to 600 kg with typical weights between 300 and 500 kg. Weddell seals aggregate on the ice to molt, and also sporadically dive during this period. After molting in fall-winter these seals disperse to sea; some individuals remain within the vicinity of their colonies, whereas other individuals disperse several hundreds of kilometers away and may not return to their colonies for several weeks.

The Weddell seal's range includes coastal areas around the Antarctic continent and they are found in areas of both fast and pack ice. Weddell seals rarely venture into open, ice-free waters. Animals inhabiting the islands of the mostly ice-free northern Antarctic Peninsula are primarily coastal in their distribution.

Weddell seals consume epipelagic (0–200 m), mesopelagic (200–1000 m) and benthic prey. They can dive to depths over 600 m to reach the deeper prey items. Their diet consists mainly of fish but they also eat cephalopods, decapods and Antarctic krill. Their feeding/haul out pattern is diurnal; they haul out during the day and forage at night in response to the vertical migration of their prey (Andrews-Goff *et al.*, 2010; as cited in Wursig *et al.*, 2018).

Over three seasons (two Antarctic summers and one winter) of observation from January 21, 2019 through March 31, 2020, individual Weddell seals were observed on shore at Bonaparte Point from the end of February of 2019 through April of 2019. Weddell seals were observed swimming in Hero Inlet in early April 2019 on several occasions. No Weddell seals were sighted again until mid-September of 2019, when an individual was again observed on the ice in Hero Inlet. After September 16, 2019, no Weddell seals were observed in the vicinity of Palmer Station until January 6, 2020; at that time a seal was observed in the vicinity of the outfall. As with 2019 observations, Weddell seal sightings at Bonaparte Point increased in mid- to late February of 2020, and continued every day or every few days through March 27, 2020.

As indicated above, all 17 species in Table 4 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have proposed authorizing it.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately

assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.*, Richardson *et al.*, 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. No direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.*, low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.*, (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 5.

TABLE 5—MARINE MAMMAL HEARING GROUPS (NMFS, 2018)

Hearing group	Generalized hearing range*
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 16 kHz.
High-frequency (HF) cetaceans (true porpoises, <i>Kogia</i> , river dolphins, cephalorhynchid, <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>)	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.*, all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.*, 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.*, 2006; Kastelein *et al.*, 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Of the seventeen marine mammal species that may be present, six are classified as low-frequency cetaceans (*i.e.*, all mysticete species), five are classified as mid-frequency cetaceans (*i.e.*, all delphinid

and ziphiid species and the sperm whale), one is classified as a high-frequency cetacean species (*i.e.*, hourglass dolphin.) and there is one species of otariid and 4 phocids.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the

content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Acoustic effects on marine mammals during the specified activity can occur from the underwater noise resulting from DTH pile installation, vibratory hammer removal, limited impact driving to seat piles, rock chipping, and the use of a hydrogrinder. The effects of underwater noise from NSF's proposed activities have the potential to result in

Level A or Level B harassment of marine mammals in the Project Area.

Description of Sound Sources

The primary relevant stressor to marine mammals from the proposed activity is the introduction of noise into the aquatic environment; therefore, we focus our impact analysis on the effects of anthropogenic noise on marine mammals. To better understand the potential impacts, we describe sound source characteristics below. Specifically, we look at the following two ways to characterize sound: By its temporal (*i.e.*, continuous or intermittent) and its pulse (*i.e.*, impulsive or non-impulsive) properties. Continuous sounds are those whose sound pressure level remains above that of the ambient sound, with negligibly small fluctuations in level (NIOSH, 1998; ANSI, 2005), while intermittent sounds are defined as sounds with interrupted levels of low or no sound (NIOSH, 1998). Impulsive sounds, such as those generated by impact pile driving, are typically transient, brief (< 1 sec), broadband, and consist of a high peak pressure with rapid rise time and rapid decay (ANSI, 1986; NIOSH, 1998). The majority of energy in pile impact pulses is at frequencies below 500 hertz (Hz). Impulsive sounds, by definition, are intermittent. Non-impulsive sounds, such as those generated by vibratory pile removal can be broadband, narrowband or tonal, brief or prolonged, and typically do not have a high peak sound pressure with rapid rise/decay time that impulsive sounds do (ANSI, 1995; NIOSH, 1998). Non-impulsive sounds can be intermittent or continuous. Similar to impact pile driving, vibratory pile driving generates low frequency sounds. Vibratory pile driving is considered a non-impulsive, continuous source. DTH is a hybrid source- the rotary drill action produces non-impulsive, continuous sounds while the hammer function produces impulsive sounds. Discussion on the appropriate harassment threshold associated with these types of sources based on these characteristics can be found in the Estimated Take section.

Potential Effects of Pile Driving

In general, the effects of sounds from pile driving to marine mammals might result in one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, and masking (Richardson *et al.*, 1995; Nowacek *et al.*, 2007; Southall *et al.*, 2007). The potential for and magnitude of these effects are dependent on several factors, including

receiver characteristics (*e.g.*, age, size, depth of the marine mammal receiving the sound during exposure); the energy needed to drive the pile (usually related to pile size, depth driven, and substrate), the standoff distance between the pile and receiver; and the sound propagation properties of the environment.

Impacts to marine mammals from pile driving activities are expected to result primarily from acoustic pathways. As such, the degree of effect is intrinsically related to the received level and duration of the sound exposure, which are in turn influenced by the distance between the animal and the source. The further away from the source, the less intense the exposure should be. The type of pile driving also influences the type of impacts, for example, exposure to impact pile driving or DTH may result in temporary or permanent hearing impairment, while auditory impacts are unlikely to result from exposure to vibratory pile driving. The substrate and depth of the habitat affect the sound propagation properties of the environment. Shallow environments are typically more structurally complex, which leads to rapid sound attenuation. In addition, substrates that are soft (*e.g.*, sand) absorb or attenuate the sound more readily than hard substrates (*e.g.*, rock) which may reflect the acoustic wave. Soft porous substrates also likely require less time to drive the pile, and possibly less forceful equipment, which ultimately decrease the intensity of the acoustic source.

Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur, in relation to distance from a source and assuming that the signal is within an animal's hearing range. First is the area within which the acoustic signal would be audible (potentially perceived) to the animal, but not strong enough to elicit any overt behavioral or physiological response. The next zone corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. Third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.*, when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

NMFS defines a noise-induced threshold shift (TS) as “a change,

usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level” (NMFS, 2016b). The amount of threshold shift is customarily expressed in dB (ANSI 1995, Yost 2007). A TS can be permanent (PTS) or temporary (TTS). As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.*, impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.*, spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.*, how animal uses sound within the frequency band of the signal; *e.g.*, Kastelein *et al.*, 2014), and the overlap between the animal and the source (*e.g.*, spatial, temporal, and spectral).

Permanent Threshold Shift—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (see NMFS 2018 for review).

Temporary Threshold Shift—NMFS defines TTS as a temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Based on data from cetacean TTS measurements (see Finneran 2015 for a review), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.*, 2000; Finneran *et al.*, 2000; Finneran *et al.*, 2002). As described in Finneran (2016), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SEL_{cum}) in an accelerating fashion: At low exposures with lower SEL_{cum}, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SEL_{cum}, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.*, recovery time), and frequency range of TTS, and

the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present.

Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.*, 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Schlundt *et al.* (2000) performed a study exposing five bottlenose dolphins and two beluga whales (same individuals as Finneran's studies) to intense one second tones at different frequencies. The resulting levels of fatiguing stimuli necessary to induce 6 dB or larger masked TTSs were generally between 192 and 201 dB re: 1 microPascal (μ Pa). Dolphins began to exhibit altered behavior at levels of 178–193 dB re: 1 μ Pa and above; beluga whales displayed altered behavior at 180–196 dB re: 1 μ Pa and above. At the conclusion of the study, all thresholds were at baseline values.

There are a limited number of studies investigating the potential for cetacean TTS from pile driving and only one has elicited a small amount of TTS in a single harbor porpoise individual (Kastelein *et al.*, 2015). However, captive bottlenose dolphins and beluga whales have exhibited changes in behavior when exposed to pulsed sounds (Finneran *et al.*, 2000, 2002, and 2005). The animals tolerated high received levels of sound before exhibiting aversive behaviors. Experiments on a beluga whale showed that exposure to a single watergun impulse at a received level of 207 kiloPascal (kPa) (30 psi) p-p, which is equivalent to 228 dB p-p, resulted in a 7 and 6 dB TTS in the beluga whale at 0.4 and 30 kHz, respectively. Thresholds returned to within 2 dB of the pre-exposure level within four minutes of the exposure (Finneran *et al.*, 2002). Although the source level of pile driving from one hammer strike is expected to be lower than the single watergun impulse cited here, animals

being exposed for a prolonged period to repeated hammer strikes could receive more sound exposure in terms of SEL than from the single watergun impulse (estimated at 188 dB re 1 μ Pa²-s) in the aforementioned experiment (Finneran *et al.*, 2002). Results of these studies suggest odontocetes are susceptible to TTS from pile driving, but that they seem to recover quickly from at least small amounts of TTS.

Behavioral Responses—Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.*, minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located. Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006). Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.*, species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.*, Richardson *et al.*, 1995; Wartzok *et al.*, 2003; Southall *et al.*, 2007; Weilgart, 2007; Archer *et al.*, 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.*, 2012), and can vary depending on characteristics associated with the sound source (*e.g.*, whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see Appendices B–C of Southall *et al.*, (2007) for a review of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the

absence of unpleasant associated events (Wartzok *et al.*, 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a “progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,” rather than as, more generally, moderation in response to human disturbance (Bejder *et al.*, 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure.

As noted above, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.*, 1995; NRC, 2003; Wartzok *et al.*, 2003). Controlled experiments with captive marine mammals have showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.*, 1997; Finneran *et al.*, 2003). Observed responses of wild marine mammals to loud pulsed sound sources (typically seismic airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds 2002; see also Richardson *et al.*, 1995; Nowacek *et al.*, 2007).

Available studies show wide variation in marine mammal response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.*, Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). There are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.*,

Frankel and Clark, 2000; Costa *et al.*, 2003; Ng and Leung, 2003; Nowacek *et al.*, 2004; Goldbogen *et al.*, 2013a,b). Variations in dive behavior may reflect interruptions in biologically significant activities (e.g., foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (e.g., bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (e.g., Croll *et al.*, 2001; Nowacek *et al.*, 2004; Madsen *et al.*, 2006; Yazvenko *et al.*, 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Respiratory variations with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (e.g., Kastelein *et al.*, 2001, 2005b, 2006; Gailey *et al.*, 2007).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals,

humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.*, 2000; Fristrup *et al.*, 2003; Foote *et al.*, 2004), while North Atlantic right whales (*Eubalaena glacialis*) have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.*, 2007). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.*, 1994).

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.*, 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from seismic surveys (Malme *et al.*, 1984). Avoidance may be short-term, with animals returning to the area once the noise has ceased (e.g., Bowles *et al.*, 1994; Goold, 1996; Morton and Symonds, 2002; Gailey *et al.*, 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (e.g., Blackwell *et al.*, 2004; Bejder *et al.*, 2006; Teilmann *et al.*, 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (e.g., directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England, 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.*, when a response consists of increased vigilance, it may come at the cost of decreased attention to other

critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (e.g., Beauchamp and Livoreil 1997; Fritz *et al.*, 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (e.g., decline in body condition) and subsequent reduction in reproductive success, survival, or both (e.g., Harrington and Veitch, 1992; Daan *et al.*, 1996; Bradshaw *et al.*, 1998). However, Ridgway *et al.*, (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.*, 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.*, 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

Stress responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (e.g., Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are

affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (e.g., Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.*, 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and “distress” is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (e.g., Holberton *et al.*, 1996; Hood *et al.*, 1998; Jessop *et al.*, 2003; Krausman *et al.*, 2004; Lankford *et al.*, 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.*, 2002b, Wright *et al.*, 2007) and, more rarely, studied in wild populations (e.g., Romano *et al.*, 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as “distress.” In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003).

Masking—Sound can disrupt behavior through masking, or interfering with, an animal’s ability to detect, recognize, or discriminate between acoustic signals of interest (e.g., those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.*, 1995).

Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (e.g., snapping shrimp, wind, waves, precipitation) or anthropogenic (e.g., pile driving, shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (e.g., signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal’s hearing abilities (e.g., sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (e.g., on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked. Given the limited vessel traffic near the Project Area and intermittent nature of pile installation and removal operations, any masking effects on marine mammals would likely be negligible.

In-Water Construction Effects on Marine Mammal Habitat—NSF’s construction activities could have localized, temporary impacts on marine mammal habitat by increasing in-water sound pressure levels and slightly decreasing water quality. Construction activities are of short duration and would likely have temporary impacts on marine mammal habitat through increases in underwater sound. Increased noise levels may affect acoustic habitat (see masking discussion above) and adversely affect marine mammal prey in the vicinity of the project area (see discussion below). During pile installation activities, elevated levels of underwater noise would ensonify Hero Inlet and nearby waters where both fish and mammals may occur and could affect foraging success. Additionally, marine mammals may avoid the area during construction, however, displacement due to noise is expected to be temporary and is not expected to result in long-term effects to the individuals or populations.

Pile driving activities may temporarily increase turbidity resulting from suspended sediments. Any increases would be temporary,

localized, and minimal. In general, turbidity associated with pile installation is localized to about a 25-foot (7.6 m) radius around the pile (Everitt *et al.*, 1980). Cetaceans are not expected to be close enough to the project activity areas to experience effects of turbidity, and any small cetaceans and pinnipeds could avoid localized areas of turbidity. Therefore, the impact from increased turbidity levels is expected to be discountable to marine mammals. No turbidity impacts to Hero Inlet or nearby foraging habitats are anticipated.

Sound may affect marine mammals and their habitat through impacts on the abundance, behavior, or distribution of prey species (e.g., crustaceans, cephalopods, fish, and zooplankton). Marine mammal prey varies by species, season, and location. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (e.g., Zelick and Mann, 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.*, 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds that are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (e.g., feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (e.g., Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Several studies have demonstrated that impulse sounds might affect the

distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (e.g., Fewtrell and McCauley, 2012; Pearson *et al.*, 1992; Skalski *et al.*, 1992; Santulli *et al.*, 1999; Paxton *et al.*, 2017). However, some studies have shown no or slight reaction to impulse sounds (e.g., Pena *et al.*, 2013; Wardle *et al.*, 2001; Jorgenson and Gyselman, 2009; Cott *et al.*, 2012).

Sound pressure levels (SPLs) of sufficient strength have been known to cause injury to fish and fish mortality. However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.*, (2012a) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.*, 2012b; Casper *et al.*, 2013).

The most likely impact to fish from construction activities at the Project Area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated.

Airborne Acoustic Effects—Pinnipeds that occur near the project site could be exposed to airborne sounds associated with pile driving that have the potential to cause behavioral harassment, depending on their distance from pile driving activities. However, in-air noise generated during pile driving activities at the pier should attenuate in air to less than levels that exceed NMFS established Level B harassment thresholds, before reaching the opposite side of Hero Inlet where seals may be on shore. A 2016 Final Rule for construction of a Navy Pier (81 FR 52614; August 9, 2016) estimated the greatest possible distances to airborne noise during installation of a 24" steel pile (using a source level of 111 dB re 20 microPascals) as 168.3 m to the 90 dB threshold for harbor seals and 53.2 m for all other seals (using a 100dB threshold). A 2019 Final Rule published for construction of the Liberty Development in Alaska estimated airborne noise during impact pile driving as 81 dB re 20 microPascals at 100 m and 93 dB re 20 microPascals at 160 m (84 FR 70274; December 20,

2019). Therefore, based on the distance to Bonaparte Point, it is unlikely that animals hauled out across Hero Inlet will be exposed to levels above the NMFS Level B harassment threshold for disturbance.

In summary, given the relatively small areas being affected (*i.e.*, Hero Inlet and highly truncated sound fields extending out to 18 km), construction activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. Thus, we conclude that impacts of the specified activity are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of "small numbers" and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as use of the acoustic sources (*i.e.*, pile installation and removal equipment) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for mysticetes due to large PTS zones as well as for phocids and otariids due to haulouts in the vicinity of the Project Area. Auditory injury is unlikely to occur for high frequency or mid-frequency species. The proposed mitigation and monitoring measures are

expected to minimize the severity of the taking to the extent practicable.

As described previously, no mortality or serious injury is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (e.g., previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (e.g., frequency, predictability, duty cycle), the environment (e.g., bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.*, 2007, Ellison *et al.*, 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μ Pa (rms) for continuous (e.g., vibratory pile-driving, DTH) and above 160 dB re 1 μ Pa (rms) for non-explosive impulsive

(e.g., seismic airguns, impact pile driving) or intermittent (e.g., scientific sonar) sources.

DTH pile installation includes drilling (non-impulsive sound) and hammering (impulsive sound) to penetrate rocky substrates (Denes *et al.*, 2016; Denes *et al.*, 2019; Reyff and Heyvaert 2019). DTH pile installation was initially thought to be a primarily non-impulsive noise source. However, Denes *et al.*, (2019) concluded from a study conducted in Virginia, that DTH pile installation should also be characterized as impulsive based on Southall *et al.*, (2007), who stated that signals with a >3 dB difference in sound pressure level in a 0.035-second window compared to a 1-second window can be considered impulsive. Therefore, DTH pile installation is treated as both an impulsive and non-impulsive noise source. In order to evaluate Level A

harassment, DTH pile installation activities are evaluated according to the impulsive criteria and using 160 dB rms. Level B harassment isopleths for DTH are determined by applying non-impulsive criteria and using the 120 dB rms threshold which is also used for vibratory driving. This approach ensures that the largest ranges to effect for both Level A and Level B harassment are accounted for in the take estimation process for DTH.

NSF’s proposed activity includes the use of continuous (vibratory hammer, DTH pile installation, hydrogrinder) and impulsive (impact pile driving, DTH pile installation) sources, and therefore the 120 and 160 dB re 1 μPa (rms) is/ are applicable.

Level A harassment for non-explosive sources—NMFS’ Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine

Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). NSF’s proposed activity includes the use of impulsive (*i.e.*, impact hammer, DTH pile installation) and non-impulsive (*i.e.*, vibratory hammer, DTH pile installation, rock chipping, hydrogrinder) sources.

These thresholds are provided in the Table 6. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>.

TABLE 6—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds* (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	Cell 1: $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	Cell 2: $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	Cell 3: $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	Cell 4: $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	Cell 5: $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	Cell 6: $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	Cell 7: $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	Cell 8: $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	Cell 9: $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	Cell 10: $L_{E,OW,24h}$: 219 dB.

*Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1 μPa²s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript “flat” is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.*, varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

The sound field in the Project Area is the existing background noise plus additional construction noise from the proposed project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.*, DTH pile installation, vibratory pile removal, limited impact for proofing purpose, rock chipping and use of hydrogrinders).

The estimated sound source levels (SSL) proposed by NSF and used in this assessment are described below and are shown in Table 7. Appendix A in the application discusses in detail the

sound source levels for all planned equipment. Sound levels from pile installation used in NSF’s application came from the Caltrans Compendium (2015) or are based on empirical data collected from other sites with similar conditions (*e.g.*, rock substrate where DTH driving would be used to install piles). NSF referenced two studies to arrive at SSLs for 24-in DTH pile installation. Noise studies from Kodiak ferry terminal (Denes *et al.*, 2016) and Skagway cruise ship terminal (Reyff and Heyvaert, 2019; Reyff, 2020). Results are shown in Table 7. NMFS has developed DTH pile installation guidelines which contain recommendations for appropriate SSLs. NSF applied these recommendations for 36-in DTH pile installation. However, NSF proposed to use the DTH pile installation SSLs shown in Table 7, which for 24-in DTH

pile installation and 24-in sockets which are more conservative than those recommended by NMFS, and NMFS deemed this approach acceptable.

NSF determined the SSLs for rock chipping based on underwater sounds measured for concrete demolition. NSF examined two sets of data available during the demolition of the Tappan Zee Bridge (state of New York) pier structures. NSF also considered the results from another study conducted by the Washington State Department of Transportation (WSDOT). Results from that analysis are shown in Table 7.

The U.S. Navy has assessed sound levels of the use of a hydrogrinder through underwater measurements (U.S. Navy 2018). The Navy measurements were reported in 1/1-octave frequency bands from 125 to 8,000 Hz for the helmet position that was assumed to be

0.5 to 1 meter from the hydraulic grinder operation. The overall unweighted sound level was computed to be 167.5 dB at 0.5 to 1 meter. Source sound levels in this report are provided for 10-m distances. Since this is a point source of sound, spherical spreading 20 Log TL coefficient results in a source sound level of 142 to 148 dB at 10 meters (see Appendix A in the application). A value of 146 dB at 10m has been used to estimate marine mammal take associated with these tools.

NSF assumed that installation of approximately one to two piles would occur over a 12-hour work day. To be precautionary in calculating isopleths, this application assumes two installation activities would occur simultaneously. For example, two 36-in

piles installed simultaneously or one 36-in pile and one 24-in pile. Brief impact pile driving of about 10 strikes may be used to seat the piles. A likely approach to installing 36-in piles would be to use DTH to install two 36-in piles simultaneously; one 36-in pile would be installed to 20-ft socket depth while a second 36-in abutment pile would be installed to a 30-ft socket depth. The abutment piles require additional depth to support lateral loads and to provide side friction against ice uplift that could occur at the shoreline. It is also possible that both 36-in piles may be installed simultaneously to 20-ft socket.

Rock chipping may be required to level pile areas and would normally occur on the same day as DTH pile installation, if possible. If rock chipping is conducted separately from DTH pile

installation, takes are accounted for by using the area ensonified during DTH pile installation to calculate takes. This precautionary approach overestimates takes that could occur if only rock chipping is conducted by itself. Rock chipping is considered to be an impulsive source.

Existing sheetpile would be removed through vibratory extraction. In some instances it may be necessary to remove piles by cutting them off at the mudline using underwater hand cutting tools. Such activity would occur on the same days as vibratory extraction. Cutting piles off at the mudline would result in less underwater noise than vibratory removal. To be precautionary, estimated marine mammal takes were calculated by assuming all piles were removed by vibratory extraction.

TABLE 7—SOUND SOURCE LEVELS

Measured sound levels ¹					Source
Activity	Peak	RMS	SEL ²	TL	
24-in Piles					
DTH pile installation	190	166	154	15	Denes <i>et al.</i> , (2016).
Vibratory Driving ⁴	170	165	165	15	Caltrans (2015).
Impact Driving	195	181	168	15	Caltrans (2015).
36-in Piles					
DTH pile installation	194	166	164	15	The DTH sound source proxy of 164 dB SEL is from 42-in piles, Reyff (2020) and Denes <i>et al.</i> , (2019).
Vibratory Driving	180	170	170	15	Caltrans (2015).
Impact Driving	210	193	183	15	Caltrans (2015).
H Piles inserted in 24-in. Sockets					
DTH pile installation	190	166	154	15	Denes <i>et al.</i> , (2016).
Vibratory Driving	170	165	165	15	Caltrans (2015).
Impact Driving	195	180	170	15	Caltrans (2015).
Removal of 24-in Template Piles					
Vibratory Driving	170	165	165	15	Caltrans (2015).
Removal of Sheet Piles					
Vibratory Driving	175	160	160	15	Caltrans (2015).
Rock Chipping					
Hydraulic Breaker	197	184	175	22	Tappan Zee Bridge ^{6,7} .
Anode Installation					
Hydro-grinder .....	.....	146	.....	20	U.S. Navy (2008).

¹ See Appendix A in application for references and discussion of all sound sources.

² SEL is single strike for impact driving and DTH pile installation. SEL for vibratory installation is per second.

⁴ Includes removal of 24-in. piles

⁵ While it is possible the socket depth would be only 20 feet, this application assumes the greater depth to be precautionary.

⁶ Reyff, J. 2018. Demolition of Existing Tappan Zee Bridge. Summary of Underwater Sound Measurements for Mechanical Demolition of Concrete Pile Caps at Piers 114 and 115, Circular Caisson at Pier 166, and Rectangular Caisson at Pier 170. To David Capobianco, New York State Thruway Authority. December 18, 2020.

⁷ Reyff, J. 2018. Demolition of Existing Tappan Zee Bridge Subject: Summary of Underwater Sound Measurements for Mechanical Demolition of Ice Breakers at Piers 173 and 169. To Kristine Edwards, New York State Thruway Authority. January 10, 2018.

When the sound fields from two or more concurrent pile installation activities overlap, the decibel addition of continuous noise sources results in much larger zone sizes than a single source. Decibel addition is not a consideration when sound fields do not

overlap. The increased SLs potentially associated with two concurrent sources with overlapping sound fields are shown in Table 8 (WSDOT 2015). Decibel addition is only applicable to continuous sources. According to NMFS guidance the SL for continuous sounds

from DTH pile installation is 166 dB regardless of the size of the pile. Under decibel addition, simultaneous DTH pile installation activities would use a SL of 169 (166 + 3) to derive the isopleth for the Level B harassment zone.

TABLE 8—SIMULTANEOUS SOURCE DECIBEL ADDITION

Hammer types	Difference in SSL	Level A zones	Level B zones
Vibratory, Impact	Any	Use impact zones	Use largest zone.
Impact, Impact	Any	Use zones for each pile size and number of strikes.	Use zone for each pile size.
Vibratory, Vibratory	0 or 1 dB ...	Add 3 dB to the higher source level	Add 3 dB to the higher source level.
	2 or 3 dB ...	Add 2 dB to the higher source level	Add 2 dB to the higher source level.
	4 to 9 dB ...	Add 1 dB to the higher source level	Add 1 dB to the higher source level.
	10 dB or more.	Add 0 dB to the higher source level	Add 0 dB to the higher source level.

Level B Harassment Zones

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * \text{Log}_{10} (R1/R2),$$

Where:

TL = transmission loss in dB

B = transmission loss coefficient; for practical spreading equals 15

R1 = the distance of the modeled SPL from the driven pile, and

R2 = the distance from the driven pile of the initial measurement

The recommended TL coefficient for most nearshore environments is the practical spreading value of 15. This value results in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions, which is the most appropriate assumption for NSF's proposed activity in the absence of

specific modelling. Level B harassment isopleths are shown in Table 15 and Table 16.

Level A Harassment Zones

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensounded area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output

where appropriate. For stationary sources such as those planned for this project, NMFS User Spreadsheet predicts the distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would incur PTS. Inputs used in the User Spreadsheet, and the resulting isopleths are reported below. Tables 9, 10 and 11 shows User inputs for single sound sources while Tables 12, 13, and 14 contain User inputs for simultaneous sources. The resulting Level A harassment isopleths for non-simultaneous activities and simultaneous activities are shown in Table 15 and Table 16 respectively. Level B harassment isopleths for simultaneous DTH pile installation utilize a 169 dB SL and corresponding isopleths are shown in Table 16. Note that strike numbers for DTH pile installation were derived by applying the duration required to drive a single pile (minutes), the number of piles driven per day, and the strike rate (average strikes per second) rates to arrive at the total number of strikes in a 24-hour period. A rate of 10 strikes per second was assumed.

TABLE 9—NMFS TECHNICAL GUIDANCE (2020) USER SPREADSHEET INPUTS TO CALCULATE PTS ISOPLETHS FOR NON-SIMULTANEOUS VIBRATORY PILE INSTALLATION ACTIVITIES AND HYDROGRINDING

Spreadsheet tab used	36-in (dock dock abutment)-in	RHIB fender piles 24-in	24-in template 10' socket	24-in wave attenuator piles-in	24-in template pile removal	Sheet pile removal	Anode installation (hydro-grinding)
	A.1) Non-impul, stat, cont.	A.1) Non-impul, stat, cont.	A.1) Non-impul, stat, cont.	A.1) Non-impul, stat, cont.	A.1) Non-impul, stat, cont.	A.1) Non-impul, stat, cont.	A.1) Non-impul, stat, cont.
Source Level (SPL RMS)	170	165	165	165	165	160	146
15 Transmission Loss Coefficient	15	15	15	15	15	15	20
Weighting Factor Adjustment (kHz)	2.5	2.5	2.5	2.5	2.5	2.5	2.5
Time to install/remove single pile (minutes)	30	30	30	30	30	30	120
Piles to install/remove per day	1	1	2	1	16	16	1

TABLE 10—NMFS TECHNICAL GUIDANCE (2020) USER SPREADSHEET INPUT TO CALCULATE PTS ISOPLETHS FOR NON-SIMULTANEOUS IMPACT PILE INSTALLATION ACTIVITIES

Spreadsheet Tab Used	36-in (dock, dock abutment)	24-in RHIB (template, wave attenuator)	Rock chipping
	E.1) Impact pile driving	E.1) Impact pile driving	E) Stationary source: impulsive, intermittent
Source Level (Single Strike/shot SEL)	183	168	197
Transmission Loss Coefficient	15	15	22
Weighting Factor Adjustment (kHz)	2	2	0
Number of pulses in 1-hr period	10	10	2,700
Piles per day	1	1	.....

TABLE 11—NMFS TECHNICAL GUIDANCE (2020) USER SPREADSHEET INPUT TO CALCULATE PTS ISOPLETHS FOR NON-SIMULTANEOUS DTH PILE INSTALLATION ACTIVITIES

Spreadsheet tab used	36-in dock 20' socket	Dock abutment-36-in 30' socket	24-in RHIB, template, wave attenuator
	E.2) DTH pile driving	E.2) DTH pile driving	E.2) DTH pile driving
Source Level (Single Strike/Shot SEL)	164	164	154
Transmission Loss Coefficient	15	15	15
Strike rate (Strikes/sec)	10	10	10
Duration (min)	345	518	345
Weighting Factor Adjustment (kHz)	2	2	2
SStrikes/pile	207,000	310,500	207,000
Piles to install/remove per day	1	1	1

TABLE 12—NMFS TECHNICAL GUIDANCE (2020) USER SPREADSHEET INPUT TO CALCULATE PTS ISOPLETHS FOR SIMULTANEOUS VIBRATORY PILE INSTALLATION ACTIVITIES

Spreadsheet tab used	36-in dock 20' socket x 2 dock abutment	RHIB fender piles 24-in x 2	24-in template 10' socket x 4	24-in wave attenuator piles-10' socket x 2	24-in wave attenuator piles-20' socket x 2
	A.1) Non-impul, stat, cont.	A.1) Non-impul, stat, cont.		A.1) Non-impul, stat, cont.	A.1) Non-impul, stat, cont.
Source Level (SPL RMS)	173	168	168	168	168
Transmission Loss Coefficient	15	15	15	15	15
Weighting Factor Adjustment (kHz)	2.5	2.5	2.5	2.5	2.5
Time to install/remove single pile (minutes)	30	30	15	30	30
Piles to install/remove per day	2	2	4	2	2

TABLE 13—NMFS TECHNICAL GUIDANCE (2020) USER SPREADSHEET INPUT TO CALCULATE PTS ISOPLETHS FOR SIMULTANEOUS IMPACT PILE INSTALLATION ACTIVITIES

Spreadsheet tab used	36-in (dock 20' socket x 2) or dock abutment-36-in 30' and 20' socket	RHIB fender piles 24-in x 2	24-in template 10' socket x 4	24-in wave attenuator piles x 2
	E.1) Impact pile driving	E.1) Impact pile driving	E.1) Impact pile driving	E.1) Impact pile driving
Source Level (Single Strike/shot SEL)	183	168	168	168
Transmission Loss Coefficient	15	15	15	15
Weighting Factor Adjustment (kHz)	2	2	2	2
Strikes/pile	10	10	10	10
Piles per day	2	2	4	2

TABLE 14—NMFS TECHNICAL GUIDANCE (2020) USER SPREADSHEET INPUT TO CALCULATE PTS ISOPLETHS FOR SIMULTANEOUS DTH PILE INSTALLATION ACTIVITIES

Spreadsheet tab used	36-in dock 20' socket x 2	Dock abutment-36-in 30' and 20' socket	24-in template 10' socket x 4	24-in wave attenuator piles-10' socket x 2/ RHIB fender piles 24-in x 2
	E.2) DTH pile driving	E.2) DTH pile driving	E.2) DTH pile driving	E.2) DTH pile driving
Source Level (Single Strike/Shot SEL)	164	164	154	154
Transmission Loss Coefficient	15	15	15	15
Strike rate (Strikes/sec)	10	10	10	10
Duration (min)	345	430	172.5	345
Weighting Factor Adjustment (kHz)	2	2	2	2
Strikes/pile	414,000	517,500	103,500	207,000
Piles to install per day	2	2	4	2

TABLE 15—LEVEL A AND LEVEL B HARASSMENT ISOPLETHS FOR NON-SIMULTANEOUS PILE INSTALLATION ACTIVITIES

		Level A harassment zones (m) based on SELcum					Level B harassment zone (m)
		Cetaceans			Pinnipeds		
		LF	MF	HF	PW	OW	
Dock, 36-in Dia. Pile Installation, 20' Socket Depth—1 pile/day.	DTH Pile Drilling	1,891	67	2,253	1,012	74	11,659
Dock Abutment, 36-in Dia. Pile Installation, 30' Socket Depth—1 pile/day.	DTH Pile Drilling	2,478	88	2,951	1,326	97	11,659
RHIB Fender Piles, 24-in Dia. Pile Installation, 20' Socket—1 pile/day.	DTH Pile Drilling	407	15	485	218	16	11,659
24-in Dia. Template Piles, 10' Socket Depth—2 piles/day.	DTH Pile Drilling	407	15	485	218	16	11,659
24-in Dia Wave Attenuator Piles, 20' Socket Depth—1 pile/day.	DTH Pile Drilling	407	15	485	218	16	11,659
Retaining Wall HP Pile inserted in Drilled 24-in Dia Sockets, 20' Socket Depth—1 pile/day.	DTH Pile Drilling	407	15	485	218	16	11,659
Removal of 24-in Dia. Template Piles—16 piles	Vibratory	51	5	75	31	2	10,000
Removal of Sheet Piles	Vibratory	23	2	35	14	1	4,642
Rock Chipping/Floor Preparation	Hydraulic Breaker	403	50	716	204	29	123
Anode Installation	Hydrogrinder	1.9	0.3	2.5	1.3	0.2	200

TABLE 16—LEVEL A AND LEVEL B HARASSMENT ISOPLETHS FOR SIMULTANEOUS PILE INSTALLATION ACTIVITIES

Daily activity scenario	Installation method	Level A harassment zones (m) based on SELcum					Level B harassment zone (m)
		Cetaceans			Pinnipeds		
		LF	MF	HF	PW	OW	
Dock, 36-in Dia. Pile Installation, 20' Socket Depth—2 pile/day.	DTH Pile Installation	3,002	107	3,576	1,607	117	18,478
Dock Abutment, 36-in Dia. Pile Installation, 30' Socket Depth and 36-in Dia. Pile 20' Socket Depth.		3,484	124	4,149	1,864	136	18,478
RHIB Fender Piles, 24-in Dia. Pile Installation, 20' Socket—2 pile/day.		647	23	770	346	25	18,478
24-in Dia. Template Piles, 10' Socket Depth—4 piles/day.							
24-in Dia Wave Attenuator Piles, 20' Socket Depth—2 pile/day.							
Retaining Wall—HP Pile inserted in Drilled 24-in Dia Sockets, 20' Socket Depth—2 piles/day.							
Dock, 36-in Dia. Pile Installation, 20' Socket Depth—1 pile/day and Wave Attenuator, 24-in Dia. Pile Installation, 20' Socket—1 pile/day.		2,011	72	2,395	1,076	78	18,478
Dock 36-in Dia. Pile Installation 30' Socket Depth and 24-in Dia Pile Installation 20' Socket Depth.		2,885	103	3,436	1,544	133	18,478
36-in Dock 20' socket x 2 Dock Abutment	Vibratory Installation	43	4	64	26	2	34,146
RHIB Fender Piles 24-in x 2		20	2	30	12	1	15,849
24-in template 10' socket x 4.							
24-in wave attenuator piles-10' socket x 2		31.8	3	47	19	1.4	
24-in wave attenuator piles-20' socket x 2.							

The calculated area that would be ensonified by single or multiple pile installation and removal sound sources is calculated based on the distance from the Palmer Station Pier installation location to the edge of the isopleth for Level B harassment and for each hearing group for Level A harassment. The scenario with the largest zone is used to estimate potential marine mammal exposures and those areas are shown in Table 17. The Palmer Station Pier is located in a narrow portion of Hero Inlet

and the areas potentially ensonified above Level A and Level B harassment thresholds is truncated by the location of land masses including assorted islands (*i.e.*, shadow effect).

Table 16 shows the construction scenario (installation of two 36-in piles, one at 30- ft and a second at 20-ft socket depth) that results in the largest PTS zone isopleths while Table 17 shows the areas of the corresponding zones ensonified areas. The maximum Level A harassment distance would be 1,864 m

(1.4 km²) for phocids in water (PW), 3,484m (3.38 km²) for LF cetaceans, and 4,149m (4.4 km²) for HF cetaceans (although HF cetaceans are considered rare in the Project Area and Level A harassment takes are not proposed). The largest Level B harassment isopleth is associated with simultaneous DTH pile installation and would be at a distance of 18,478 m from the source covering an area of 54.99 m.

TABLE 17—HARASSMENT ZONE AREAS USED FOR TAKE ESTIMATION ¹

Pile type	Total piles	Level A max area cetaceans ³ (km ²)	Level A max area pinnipeds ³ (km ²)	Level B area all species (km ²)
36-in piles (one @30-ft socket depth and one @20-ft socket depth)	18	3.38 (LF), 4.4 (HF), 0.03 (MF)	1.4 (PW), 0.03 (OW)	54.99
32-in piles (Bent 1). Pile Removal (24-in)	4 16	0.006 (LF), 0.012 (MF), -0 (MF)	0.002 (PW)	20.78
Sheetpile Removal	20	0.001 (LF), 0.003 (HF), -0 (MF)	0.0006 (PW)	5.27
Anode Installation	n/a	n/a	n/a	0.07
Rock Chipping	unk			
Total	88			

¹ Assumes simultaneous installation (*i.e.*, two pile installations occurring at the same time).

Marine Mammal Occurrence and Take Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

The approach by which the information provided above is brought together to produce a quantitative take estimate is described here. For some species only observational data is available and is used to estimate take. For marine mammals with known density information estimated harassment take numbers are calculated using the following equation (summed across each type of activity):

$$\text{Estimated take} = \text{animal density} \times \text{ensonified area} \times \text{operating days}$$

As noted above we used the most conservative option for estimating ensonified area for each activity. We also used conservative estimates of the number of days of work for each activity.

Takes were estimated by considering the density of marine mammals per km² multiplied by the potential area ensonified (km²) and the number of days the noise could occur during in-water construction. The Project Area is located in the nearshore environment relative to the Antarctic Peninsula as defined by data reported in Santora *et al.* (2009). Sources for density data and average group sizes are found in Table

6–3 in the application. For some species only offshore data were available, for some only nearshore data, and for others data existed for both areas. Offshore densities were used to estimate take for eight species. Nearshore densities were unavailable for three species. Nearshore densities were used to calculate take for four species. Data from these offshore sources results in averaging across large portions of the region. NSF notes that these data are from areas where cetaceans may occur in significantly greater densities than the Palmer Pier Project Area due to expected increased faunal density along the sea ice edge and shelf-frontal features in the southern oceans. These oceanographic features are not present within the Project Area, so lower densities of cetaceans are expected within close proximity to Palmer Station. Therefore, the offshore densities may represent an overestimate of anticipated densities within the Palmer Station Project Area.

NSF estimated Level A harassment takes by multiplying the Level A harassment areas by the species density (nearshore or offshore as described above) which was then multiplied by the expected number of pile driving days for each activity type. The exposures for each activity were added to arrive at calculated Level A harassment take number as shown in Table 20. In cases where both nearshore

and offshore densities were available, the higher of the two densities is used to estimate take. Note that designated shutdown zones cover all of the Level A harassment zones with the exception of pinnipeds, where the zones in some cases are larger than the proposed 50-m shutdown zone. However, we are proposing to authorize take for some cetacean species where the calculated Level A harassment take is significant, and the large PTS zone sizes could allow animals to enter into these zones without being observed by protected species observers (PSOs).

A similar approach was employed to derive estimated take by Level B harassment. The Level B harassment zones are determined by taking the total area of the Level B harassment zones (54.99 km²; 20.78 km²; 5.27 km²; 0.07 km²) and subtracting the Level A harassment areas as defined by activity type and hearing group.

The Level B harassment zone area was multiplied by the highest density for a species (nearshore or offshore as described above) which was multiplied by the expected number of pile driving days for each activity type. The exposures for each activity were summed to arrive at the calculated Level B harassment take numbers as shown in Table 18. Additional detailed information may be found in Appendix B of the application.

TABLE 18—CALCULATED LEVEL A AND LEVEL B HARASSMENT EXPOSURES

Species	Level A harassment total exposures	Level B harassment total exposures
Antarctic Minke Whale (LF)	15.23	312.25
Arnoux's Beaked Whale (MF)	0.0001	0.14
Blue Whale (LF)	0.0081	0.17
Fin Whale (LF)	13.74	281.70
Hourglass Dolphin (HF)	0.32	4.94
Humpback Whale (LF)	5.91	121.21
Killer Whale (MF)	0.04	111.70
Long-finned Pilot Whale (MF)	0.01	28.19
Southern Bottlenose Whale (MF)	0.009	23.55
Sei Whale (LF)	0.04	0.84
Southern Right Whale (LF)	0.07	1.34
Sperm Whale (MF)	0.02	16.73
Antarctic Fur Seal (OW)	0.15	356.50
Crabeater Seal (PW)	119.07	6128.78
Southern Elephant Seal (PW)	0.02	1.04
Leopard Seal (PW)	0.02	1.04
Weddell Seal (PW)	3.65	187.97

In addition to considering density data presented in the literature, recent marine mammal observation data from Hero Inlet and nearby areas between January 21, 2019 and March 31, 2020 are also considered in the take estimates. Observations within Hero

Inlet near Palmer Station included animals observed in the waters of Hero Inlet, or hauled out at Gamage Point or Bonaparte Point. Gamage Point is approximately 100 m west of the pier area on Anvil Island while Bonaparte Point is located across Hero Inlet 135m

southeast of the Pier area. Table 19 shows a comparison between observational data from the Project Area (NSF, personal communication) and the calculated takes by Level A harassment based on density data.

TABLE 19—COMPARISON OF OBSERVATION DATA FROM HERO INLET, GAMAGE POINT AND BONAPARTE POINT 2019–2020 TO TOTAL LEVEL A HARASSMENT EXPOSURE ESTIMATES CALCULATED BASED ON DENSITY DATA

Species	January 21–March 28, 2019 observations	October 12, 2019–March 31, 2020 observations	Density-based total exposures
Humpback Whale (LF)	0	0	5.91
Antarctic Fur Seal (OW)	73	70	0.15
Crabeater Seal (PW)	20	24	119.07
Southern Elephant Seal (PW)	1	0	0.02
Leopard Seal (PW)	3	2	0.02
Weddell Seal (PW)	8	6	3.65

Comparing the estimated exposures based on pinniped densities, number of days, and the Level A Harassment zone to local observational data from Palmer Station over two multiple-month periods suggests that some pinniped species were potentially observed at a greater rate than would be expected from density information. In the interest of generating a more conservative estimate that will ensure coverage for any marine mammals encountered, the number of Antarctic fur, leopard and Weddell seal takes have been increased to reflect the number individuals observed in Hero Inlet.

Table 20 compares the number of calculated and proposed Level A and B harassment takes for each species. Level B harassment takes for Arnoux's beaked whale, blue whale, hourglass dolphin,

sei whale, and Southern right whale have been adjusted based on group size such that a higher level of Level B harassment take is proposed than was projected solely based on densities. Arnoux's beaked whales often occur in groups of 6–10 and occasionally up to 50 or more (Balcomb 1989). As a precautionary measure NSF requested and NMFS has proposed authorizing 12 takes of this species by Level B harassment. Classified as HF cetaceans, these beaked whales have a relatively large Level A harassment zone that extends to as much as 4,149 m. However, calculated take by Level A harassment is fractional and furthermore, this is a deep diving and deep foraging species and it would be unlikely that animals would congregate in a Level A harassment zone long

enough to accrue enough energy to experience PTS. Therefore, no Level A take was requested by NSF nor is proposed for authorization by NMFS. Blue whales are unlikely to be found in the Project Area. However, NSF requested and NMFS conservatively proposes to authorize two Level B harassment takes based on one average group size (NMFS, 2020). Hourglass Dolphins group size is generally 2–6 individuals with groups of up to 25 observed (Santora 2012). Classified as HF cetaceans, these dolphins have a relatively large Level A harassment zone that extends to 4,149 m. However, local observational data sets have not recorded a single animal and the species tends to be found in waters close to the Antarctic Convergence. Given this information NMFS proposes to

authorize 25 takes by Level B harassment which is a reduction from 60 takes requested by NSF. Level A harassment takes are not expected or authorized since the dolphin species is highly mobile and is unlikely to remain in the zone long enough to experience PTS. Sei whales have an average group size of 6 (NMFS 2020) and generally inhabit continental shelf and slope waters far from coastlines. They are unlikely to occur but as a precautionary measure NSF has requested and NMFS proposes to authorize 6 takes by Level B harassment. Takes by Level A harassment are not expected or proposed for authorization. Southern right whales live in groups of up to 20 individuals, but are more commonly found in groups of two or three, unless at feeding grounds. Observational surveys near Palmer Station did not record the presence of these whales. Therefore, NSF requested and NMFS

conservatively proposes to authorize 20 takes of Southern right whale by Level B harassment. No take by Level A harassment is anticipated or proposed for authorization.

As discussed above, the proposed takes have been adjusted from the calculated takes based on observation data as summarized in Table 19. Local observers recorded 73 and 70 Antarctic fur seals in 2019 and 2020 respectively located in close proximity to the pier during months when construction would take place. As a precaution, the number of takes by Level A harassment requested by NSF and proposed for authorization by NMFS has been increased beyond the calculated density value to 80. Similarly, three leopard seals were observed in 2019 and two were recorded in 2020. To be precautionary, NSF requested and NMFS is proposing to authorize 5 leopard seal takes by Level B. Further,

since leopard seals are thought to be more likely to spend more time in the immediate vicinity (*i.e.*, not as likely to travel through as the cetacean species discussed above) and potentially enough time in the Level A harassment zone to incur PTS, NMFS is also proposing to authorize 5 takes by Level A harassment. Finally, eight and six Weddell seals were observed in 2019 and 2020, respectively. Given this information, and again to be precautionary NSF has requested and NMFS is proposing to authorize 10 takes by Level A harassment. Finally, NMFS has proposed a single take by Level A harassment of Southern elephant seal. Like all seals authorized for take there are driving scenarios where the PTS isopleth would be larger than 50-m pinniped shutdown zone. While only one elephant seal has been observed near Palmer Station, it could occur in the Level A harassment zone.

TABLE 20—PROPOSED TAKES BY LEVEL A AND LEVEL B HARASSMENT COMPARED TO CALCULATED EXPOSURES

Species	Calculated Level A harassment exposures	Proposed Level A harassment take	Calculated Level B harassment exposures	Proposed Level B harassment take	Takes as percent of abundance
Antarctic Minke Whale (LF)	15.23	15	312.25	312	1.80
Arnoux's Beaked Whale (MF) ^a	0.00	0	0.14	12	Unknown
Blue Whale (LF) ^a	0.01	0	0.17	2	0.12
Fin Whale (LF)	13.74	14	281.70	282	6.33
Hourglass Dolphin (HF) ^a	0.32	0	4.94	25	0.01
Humpback Whale (LF)	5.91	6	121.21	121	1.34
Killer Whale (MF)	0.04	0	111.7	112	0.45
Long-finned Pilot Whale (MF)	0.01	0	28.19	28	0.01
Southern Bottlenose Whale (MF)	0.01	0	23.55	24	0.04
Sei Whale (LF) ^a	0.04	0	0.84	6	0.96
Southern Right Whale (LF) ^a	0.07	0	1.34	20	1.13
Sperm Whale (MF)	0.02	0	16.73	17	0.14
Antarctic Fur Seal (OW)	0.15	^b 80	356.5	357	0.02
Crabeater Seal (PW)	119.07	120	6,128.78	6,129	0.12
Southern Elephant Seal (PW)	0.02	1	1.04	1	<0.01
Leopard Seal (PW)	0.02	^b 5	1.04	1	<0.01
Weddell Seal (PW)	3.65	^b 10	187.97	188	0.04

^a Level B harassment takes increased to account for group size assuming one group is encountered during the project.

^b Increased from calculated exposures due to local observational data.

Table 20 also shows the proposed take by harassment for all species as a percentage of stock abundance.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for

incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful

implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case

of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

The following mitigation measures are proposed in the IHA:

- NSF must avoid direct physical interaction with marine mammals during construction activities. If a marine mammal comes within 10 m of such activity, operations must cease and vessels must reduce speed to the minimum level required to maintain stearage and safe working conditions;
- Training would occur between construction supervisors and crews and the PSO team and relevant NSF staff prior to the start of all pile driving and construction activities, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures are clearly understood;
- Pile driving activities must be halted upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met, entering or within the harassment zone;
- NSF will establish and implement a shutdown zone of 50 m for fur seals under all pile driving scenarios. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones typically vary based on the activity type and marine mammal hearing group.

Shutdown zones for cetaceans and other pinnipeds are based on Level A harassment isopleths shown in Table 17. Based on observation data, fur seals are known to swim up Hero Inlet (approximately 135 m wide) to haul out. The proposed 50-m shutdown zone for fur seals can safely be observed, would prevent injury to seals while still allowing seals to move up the inlet where they may haul out on land, and would allow construction to continue safely and efficiently;

- Shutdown zones have been established for all hearing groups under all driving scenarios as shown in Tables 21 and 22 and are based on calculated Level A harassment zones;
- Monitoring must take place from 30 minutes prior to initiation of pile driving activity through 30 minutes post-completion of pile driving activity. Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine the shutdown zones clear of marine mammals. Pile driving may commence following 30 minutes of observation when the determination is made;
- If the Level A harassment shutdown zones are not visible due to poor environmental conditions (e.g., excessive wind or fog, high Beaufort state), pile installation would cease until the entirety of the Level A harassment shutdown zones is observable;
- If pile driving is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone or 15 minutes have

passed without re-detection of the animal;

- If impact driving should be needed (i.e., for proofing) NSF must use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of three strikes at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. A soft start must be implemented at the start of each day that begins with impact pile driving and at any time impact driving would occur after cessation of impact pile driving for a period of 30 minutes or longer;
- In-water construction would occur during daylight over a 12-hour workday to minimize the potential for PTS for species that may occur within the Level A harassment zones; and
- When transiting to the site, marine mammal watches must be conducted by crew or those navigating the vessel. When in the Project Area, if a whale is sighted in the path of a support vessel or within 92 m (300 feet) from the vessel, NSF must reduce speed and must not engage the engines until the animals are clear of the area. If a whale is sighted farther than 92 m (300 feet) from the vessel, NSF must maintain a distance of 92 m (300 feet) or greater between the whale and the vessel and reduce speed to 10 knots or less. Vessels must not be operated in such a way as to separate members of a group of whales from other members of the group. A group is defined as being three or more whales observed within a 500 m area and displaying behaviors of directed or coordinated activity (e.g., group feeding).

TABLE 21—SHUTDOWN AND HARASSMENT ZONES (METERS) FOR NON-SIMULTANEOUS PILE INSTALLATION ACTIVITIES

Pile size, type, and method	Minimum shutdown zone					Level B harassment zone (m)
	Cetaceans			Pinnipeds		
	LF	MF	HF	PW	OW	
Dock, 36-in Dia. Pile Installation, 20' Socket Depth—1 pile/day (DTH)	1,900	70	2,255	1,015	50	11,659
Dock Abutment, 36-in Dia. Pile Installation, 30' Socket Depth—1 pile/day (DTH)	2,500	90	2,955	1,330		
RHIB Fender Piles, 24-in Dia. Pile Installation, 20' Socket—1 pile/day	410	15	485	220		
24-in Dia. Template Piles, 10' Socket Depth—2 piles/day.						
24-in Dia. Wave Attenuator Piles, 20' Socket Depth—1 pile/day.						
Retaining Wall HP Pile inserted in Drilled 24-in Dia. Sockets, 20' Socket Depth—1 pile/day.						
Removal of 24-in Dia. Template Piles—16 piles	55	10	75	35		10,000
Removal of Sheet Piles	25		35	15		4,642
Rock Chipping/Floor Preparation	405	50	720	205		123

TABLE 21—SHUTDOWN AND HARASSMENT ZONES (METERS) FOR NON-SIMULTANEOUS PILE INSTALLATION ACTIVITIES—Continued

Pile size, type, and method	Minimum shutdown zone					Level B harassment zone (m)
	Cetaceans			Pinnipeds		
	LF	MF	HF	PW	OW	
Anode Installation	10	10	10	10		200

TABLE 22—SHUTDOWN AND HARASSMENT ZONES (METERS) FOR SIMULTANEOUS PILE INSTALLATION ACTIVITIES

Daily activity scenario	Minimum shutdown zone					Level B harassment zone (m)
	Cetaceans			Pinnipeds		
	LF	MF	HF	PW	OW	
Dock, 36-in Dia. Pile Installation, 20' Socket Depth—2 pile/day	3,500	110	3,580	1,610	50	18,478
Dock Abutment, 36-in Dia. Pile Installation, 30' Socket Depth and 36-in Dia. Pile 20' Socket Depth		125	4,150	1,865		
RHIB Fender Piles, 24-in Dia. Pile Installation, 20' Socket—2 pile/day	650	25	770	350		
24-in Dia. Template Piles, 10' Socket Depth—4 piles/day.						
24-in Dia. Wave Attenuator Piles, 20' Socket Depth—2 pile/day.						
Retaining Wall—HP Pile inserted in Drilled 24-in Dia. Sockets, 20' Socket Depth—2 piles/day.						
Dock, 36-in Dia. Pile Installation, 20' Socket Depth—1 pile/day and Wave Attenuator, 24-in Dia. Pile Installation, 20' Socket—1 pile/day	2,050	75	2,400	1,080		
Dock 36-in Dia. Pile Installation 30' Socket Depth and 24-in Dia. Pile Installation 20' Socket Depth	2,900	105	3,500	1,545		
36-in Dock 20' socket x 2 Dock Abutment	45	10	65	30		34,146
RHIB Fender Piles 24-in x 2	20		30	10		15,849
24-in template 10' socket x 4.						
24-in wave attenuator piles-10' socket x 2	35		50			
24-in wave attenuator piles-20' socket x 2	35		50			

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing

the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed Project Area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (e.g., presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or

cumulative, acute or chronic), through better understanding of: (1) Action or environment (e.g., source characterization, propagation, ambient noise); (2) affected species (e.g., life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (e.g., age, calving or feeding areas).

- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.

- Effects on marine mammal habitat (e.g., marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).

- Mitigation and monitoring effectiveness.

Visual Monitoring

One NMFS-approved, formally trained PSO with prior experience performing the duties of a PSO during construction activities would serve as team leader, supported by three PSOs trained on site or through available online training programs compliant with NMFS standards. PSOs must be independent (i.e., not construction personnel) and have no other assigned tasks during monitoring periods. Prior to initiation of construction, PSOs would complete a training/refresher session on marine mammal monitoring, to be conducted shortly before the anticipated start of the open water season construction activities.

Primary objectives of the training session include:

- Review of the mitigation, monitoring, and reporting requirements provided in the application and IHA, including any modifications specified by NMFS in the authorization;
- Review of marine mammal sighting, identification, and distance estimation methods;
- Review of operation of specialized equipment (bigeye binoculars, GPS); and
- Review of, and classroom practice with, data recording and data entry systems, including procedures for recording data on marine mammal sightings, monitoring operations, environmental conditions, and entry error control.

PSOs must have the following additional qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and

- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Two PSOs must be on duty during all in-water construction activities and must record all observations of marine mammals regardless of distance from the pile being driven or covered activity. PSOs shall document any behavioral reactions in concert with distance from piles being driven or removed. PSOs are limited to monitoring no more than 4 hours per shift with sufficient breaks and no more than 12 hours per day to minimize fatigue.

The placement of PSOs during all pile driving and removal and drilling activities will ensure that the entire shutdown zones are visible during pile installation. Should environmental conditions deteriorate such that marine mammals within the entire shutdown zone will not be visible (e.g., fog, heavy rain), pile driving and removal must be delayed until the PSO is confident marine mammals within the shutdown zone could be detected. The primary monitoring location currently proposed by NSF would be on the roof platform of the Garage Warehouse Recreation (GWR) building (approximately 20 meters above sea level) to provide visual coverage of the Level A shutdown zones. NMFS agrees that the GWR building is an appropriate monitoring location. The primary PSO can monitor the Project Area generally south-southeast while the second PSO can monitor the area generally west-southwest that may be ensounded. With reticle binoculars the distance potentially visible by a 1.8-m tall PSO from this point would be about 4,360 m. Mounted big eye binoculars would be provided to PSOs to better cover the Level A harassment zone. NSF believes this location and is adequate to fully monitor the Level A harassment and shutdown zones, however, we note that sea state, glare, observer expertise, and other factors can affect the ability of PSOs to see and identify marine mammals to hearing group at such large distances, even if those distances are theoretically observable. Local researchers have reported that very little of some level B harassment zones will be visible (Ari Friedlander, personal communication).

Palmer Station normally has 2.8 meter RHIBs, 2 4.8 m RHIBs, and a number of smaller boats that are normally available and used on a daily basis in areas within 2–3 miles of the station (Ari Friedlander, personal communication). NSF has stated that PSOs in boats that would monitor the outer part of the

Level A or Level B harassment zones are not practicable because the remote location of the Project Area presents both safety and logistical challenges. Given the comparatively limited information regarding the species in this area and the likely impacts of construction activities on the species in this area, NMFS is specifically requesting public comment on the proposed monitoring and mitigation requirements.

Reporting

A draft marine mammal monitoring report will be submitted to NMFS within 90 days after the completion of pile driving and removal activities, or 60 days prior to a requested date of issuance of any future IHAs for projects at the same location, whichever comes first. The report will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including the number and type of piles driven or removed and by what method (i.e., impact or cutting) and the total equipment duration for cutting for each pile or total number of strikes for each pile (impact driving);
- PSO locations during marine mammal monitoring;
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance;
- Upon observation of a marine mammal, the following information: Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting; Time of sighting; Identification of the animal(s) (e.g., genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species; Distance and bearing of each marine mammal observed relative to the pile being driven for each sighting (if pile driving was occurring at time of sighting); Estimated number of animals (min/max/best estimate); Estimated number of animals by cohort (adults, juveniles, neonates, group composition, etc.); Animal's closest point of approach and estimated time spent within the harassment zone; Description of any

marine mammal behavioral observations (e.g., observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (e.g., no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);

- Number of marine mammals detected within the harassment zones, by species; and
- Detailed information about any implementation of any mitigation triggered (e.g., shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.

If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

Reporting Injured or Dead Marine Mammals

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the IHA-holder must immediately cease the specified activities and report the incident to the Office of Protected Resources (*PR.ITP.MonitoringReports@noaa.gov*), NMFS as soon as feasible. If the death or injury was clearly caused by the specified activity, NSF must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. The IHA-holder must not resume their activities until notified by NMFS. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not

reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be “taken” through harassment, NMFS considers other factors, such as the likely nature of any responses (e.g., intensity, duration), the context of any responses (e.g., critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS’s implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (e.g., as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

DTH pile installation, vibratory pile removal, limited impact pile driving for proofing, rock chipping and use of a hydrogrinder have the potential to disturb or displace marine mammals. Specifically, the project activities may result in take, in the form of Level A and Level B harassment from underwater sounds generated from pile driving activities. Potential takes could occur if individuals are present in the ensonified zone when these activities are underway.

The takes from Level A and Level B harassment would be due to potential PTS, TTS and behavioral disturbance. Even absent mitigation, no mortality or serious injury is anticipated given the nature of the activity and construction method. The potential for harassment would be further minimized through the implementation of the planned mitigation measures (see Proposed Mitigation section).

Effects on individual animals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (e.g., Thorson and Reyff

2006; HDR Inc. 2012; Lerma 2014; ABR 2016). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile installation, although even this reaction has been observed primarily only in association with impact pile driving. If sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring. While DTH pile installation associated with the proposed project may produce sound at distances of many kilometers from the project site, we expect that animals annoyed by project sound would simply avoid the area and use more-preferred habitats. Furthermore, during any impact driving, implementation of soft start procedures will be required and monitoring of established shutdown zones will be required for all pile installation and removal activities, significantly reducing the possibility of injury. Use of impact driving will be limited to proofing of piles after they have been set in place. Given sufficient notice through use of soft start (for impact driving), marine mammals are expected to move away from an irritating sound source prior to it becoming potentially injurious. This sort of low-level localized displacement, in the absence of any specific known biologically important areas, would not be expected to impact the reproduction or survival of any individuals.

In addition to the expected effects resulting from authorized Level B harassment, we anticipate that Antarctic minke whales, fin whales, and humpback whales may sustain some limited Level A harassment in the form of auditory injury due to large PTS zones for LF cetaceans. We are also proposing to authorize take by Level A harassment of Antarctic fur seals, crabeater seals, leopard seals, Weddell seals, and Southern elephant seals since the Level A harassment zones are large relative to the ability to detect low profile, species that are common in the region. However, animals that experience PTS would likely be subjected to slight PTS, *i.e.*, minor degradation of hearing capabilities within regions of hearing that align most completely with the frequency range of the energy produced by pile driving, *i.e.*, the low-frequency region below 2 kHz, not severe hearing impairment or impairment in the regions of greatest hearing sensitivity. If hearing impairment occurs, it is most likely that the affected animal would lose a few decibels in its hearing sensitivity, which in most cases is not likely to

meaningfully affect its ability to forage and communicate with conspecifics.

The project is also not expected to have significant adverse effects on affected marine mammals' habitats. The project activities would not modify existing marine mammal habitat for a significant amount of time. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences for marine mammals.

The nature of NSF's proposed construction activities precludes the likelihood of serious injury or mortality, even absent mitigation. For all species and stocks, take would occur within a limited area (Hero Inlet and nearby waters) that constitutes a small portion of the ranges for authorized species. Level A and Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein. Further, the amount of take proposed to be authorized is extremely small when compared to stock abundance of authorized species.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality or serious injury is anticipated or authorized;
- The relatively small number of Level A harassment exposures are anticipated to result only in slight PTS within the lower frequencies associated with pile driving;
- The anticipated incidents of Level B harassment would consist of, at worst, temporary modifications in behavior that would not result in fitness impacts to individuals;
- No adverse effects on affected marine mammals' habitat are anticipated;
- No important habitat areas have been identified within the Project Area;
- For all species, Hero Inlet and nearby waters represent very small and peripheral part of their ranges; and
- The required mitigation measures (*i.e.*, shutdown zones) are expected to be effective in reducing the effects of the specified activity.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into

consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS proposes to authorize is below one third of the estimated stock abundances for all 17 species. For all requested species, the proposed take of individuals is less than 6.4 percent of the abundance of the affected species or stock as shown in Table 20. This is likely a conservative estimate because it assumes all take are of different individual animals, which is likely not the case. Some individuals may return multiple times in a day, but PSOs would count them as separate takes if they cannot be individually identified.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, in this case with the ESA Interagency Cooperation Division.

NMFS is proposing to authorize take of blue whale, fin whale, sei whale, Southern right whale, and sperm whale, which are listed as endangered under the ESA.

The Permit and Conservation Division has requested initiation of Section 7 consultation with the Interagency Cooperation Division for the issuance of this IHA. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to NSF to conduct the Palmer Station Pier Replacement project at Anvers Island, Antarctica, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>.

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed Palmer Station Pier Replacement project. We also request at this time comment on the potential Renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent Renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the Description of Proposed Activities section of this notice is planned or (2) the activities as described in the

Description of Proposed Activities section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA);

- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take); and

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized; and

Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: August 13, 2021.

Shannon Bettridge,

*Acting Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 2021-17725 Filed 8-17-21; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XA720]

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Receipt of Petition for Rulemaking for Atlantic Cod

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

ACTION: Announcement of receipt of petition for rulemaking; request for comments.

SUMMARY: NMFS announces the receipt of a petition for rulemaking from the Conservation Law Foundation. This petition requests NMFS prepare a Secretarial Amendment and take specific emergency action to end overfishing and rebuild Atlantic cod.

DATES: Comments must be received on or before *October 4, 2021*.

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2021-0039, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <http://www.regulations.gov> and enter NOAA-NMFS-2021-0039 in the Search box. Click on the "Comment" icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publically accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Peter Christopher, Supervisory Fishery Policy Analyst, telephone 978-281-9288, email: peter.christopher@noaa.gov.

SUPPLEMENTARY INFORMATION: The Conservation Law Foundation (CLF) has petitioned NMFS to implement emergency regulations and a Secretarial Amendment for the Northeast multispecies fishery, and other relevant fisheries that use gear capable of catching more than a minimal amount of Atlantic cod. CLF's petition asserts that NMFS has repeatedly approved New England Fishery Management Council actions that have failed to prevent and end overfishing and rebuild Atlantic cod stocks. CLF is petitioning NMFS to implement conservation and management measures it deems necessary to end overfishing and rebuild the Gulf of Maine and Georges Bank cod stocks.

CLF cites numerous reasons for NMFS to take Secretarial action. CLF asserts that NMFS has consistently approved

management measures that failed to address low recruitment, neglected to account for model errors and uncertainty when setting catch advice, approved uncertainty buffers that do not account for this uncertainty, and approved the use of an inadequate acceptable biological catch (ABC) control rule. In addition, CLF states that NMFS has failed to conduct adequate rebuilding progress reviews for both the Gulf of Maine and Georges Bank cod stocks as required under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), or as required by the supplemental rebuilding program review process implemented in Framework Adjustment 51 to the Northeast Multispecies Fishery Management Plan (FMP). This review process requires the Council to review a rebuilding plan if: The total catch limit for a stock has not been exceeded during the rebuilding program; new scientific information indicates that the stock is not rebuilding according to the program trajectory; and if the fishing mortality associated with rebuilding (Frebuild) drops below 75 percent of the fishing mortality associated with maximum sustainable yield (FMSY). According to CLF, the Gulf of Maine cod stock has met all three of these criteria, but the Council has not initiated its required rebuilding program review. Further, CLF asserts that NMFS has failed to recognize or account for the findings of a National Research Council (NRC) Rebuilding Committee, which identified several reasons why stocks may not rebuild as expected under their respective rebuilding plans. Finally, CLF states that in NMFS's denial of a 2015 petition for rulemaking on Gulf of Maine cod, NMFS committed to prevent overfishing, rebuild the stock, and adjust management measures as needed in response to the findings of a 2015 assessment. CLF asserts that these commitments were not upheld, and that NMFS did not properly balance biological and socioeconomic impacts in its rationale to deny the 2015 petition.

CLF's petition also alleges that inadequate at-sea monitoring coverage in the sector fishery has failed to provide sufficiently accurate and precise data to prevent and end overfishing or rebuild the cod stocks. CLF asserts that inadequate monitoring coverage targets, coupled with low quotas, have created incentives for the fishing industry to illegally discard and misreport cod catch. Additionally, CLF relies on recent analyses in the development of Amendment 23 to the Northeast Multispecies FMP indicating

that there is an observer effect in the Northeast multispecies fishery. This observer effect could mean observed trips are not representative of unobserved trips. CLF also states that, without accurate and precise catch data, managers cannot appropriately apply the accountability measures that are designed to prevent overfishing.

Last, CLF states that measures to protect essential fish habitat, help rebuild cod stock age structure, account for sub-populations, and account for climate change impacts, are critical to cod recovery. CLF asserts that the rebuilding plans that have been implemented for cod do not identify and protect critical cod spawning areas or adequately conserve habitat for juvenile cod. CLF also states that past management actions have failed to address truncated cod stock age structures, which may contribute to reduced recruitment and decreased resilience to stressors. CLF asserts that managing cod as two stocks (Gulf of Maine and Georges Bank) fails to account for sub-populations, and that recent research by the Atlantic Cod Stock Working Group suggests that at least three sub-populations exist. Differences in the characteristics of these sub-populations, such as differences in spawning seasonality, are important for stock recovery. Finally, CLF states that stock assessments and management measures for Atlantic cod must account for impacts to the stock due to climate change, especially since temperature and other environmental conditions have been shown to impact cod biology.

The CLF petition requests NMFS implement all of the following conservation and management measures.

1. 100-percent at-sea monitoring on all commercial groundfish trips.
2. Measures to prohibit directed commercial and recreational fishing for Atlantic cod that:
 - a. Implement large area closures once a stock's incidental limit is caught;
 - b. Reduce the incidental catch rate annually, consistent with the current ABC control rule until overfishing is ended;
 - c. Prioritize the allocation of incidental catch to groundfish vessels, consistent with the current methodology; and
 - d. Ensure that any incidental catch history during the closure of the directed fishery will not count towards future potential sector contributions.
3. Area closures to protect all identified Atlantic cod spawning locations and favorable habitat for juvenile and adult cod.

4. A requirement to use modified groundfish gear, such as haddock separator trawl or other selective fishing technology, throughout the U.S. range of Atlantic cod to reduce incidental cod catch.

5. Additional measures in the recreational fisheries to reduce the mortality of incidental catch of Atlantic cod.

In a letter dated June 10, 2020, NMFS requested the New England Fishery Management Council consider the petition. Because Council development of fishery management measures is the core of the Magnuson-Stevens Act, NMFS wanted to ensure that the Council considered the petition and had the opportunity to take appropriate action through the Council process if it deemed that such action was necessary. After considering the petition at its June Council meeting, the Council sent a letter to NMFS on November 27, 2020, describing its consideration and conclusions. The Council concluded that the petition does not have merit based on its rejection of CLF's assertions underlying its claim that the Council has failed to take measures necessary to protect cod and declined to consider a majority of CLF's recommended measures. The Council stated that it already approved increasing monitoring requirements in Amendment 23 to the Northeast Multispecies FMP. Also, it is important to note that the Council plans to consider how new cod stock structure information may affect development of conservation and management measures and is advocating for the development of a new data-limited modeling approach for the Eastern George Bank cod. See **ADDRESSES** for the Council's letter and grounds for its decision.

The Magnuson-Stevens Act authorizes regional fishery management councils to develop fishery management measures, and specifically provides the New England Fishery Management Council with the authority to manage the Gulf of Maine and Georges Bank cod stocks. For the reasons described above and in the Council's letter to NMFS, the Council declined to take additional action on Atlantic cod after reviewing the contents of the petition. However, CLF has provided sufficient information and support in its request for Secretarial action to warrant publication of a notice seeking public comment.

In addition to the petition and information provided by CLF and the Council, NMFS will consider comments received when determining whether to proceed with the development of conservation and management measures suggested by the petition. Upon determining whether to initiate the

rulemaking suggested by the petition, the Assistant Administrator for Fisheries, NOAA, will publish a notice of the agency's decision or action in the **Federal Register**.

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

Dated: August 12, 2021.

Kelly Denit,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2021-17674 Filed 8-17-21; 8:45 am]

BILLING CODE 3510-22-P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection Number 3038-0007, Regulation of Domestic Exchange-Traded Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice; extension of an existing collection.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed extension of a collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on rules related to risk disclosure concerning exchange-traded commodity options.

DATES: Comments must be submitted on or before October 18, 2021.

ADDRESSES: You may submit comments, identified by "OMB Control No. 3038-0007," by any of the following methods:

- The CFTC website, at <http://comments.cftc.gov/>. Follow the instructions for submitting comments through the website.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

• *Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method and identify that it is for the extension/renewal of Collection Number 3038-0007. All comments must be submitted in English, or if not,

accompanied by an English translation. Comments will be posted as received to <http://www.cftc.gov>.

FOR FURTHER INFORMATION CONTACT: Jacob Chachkin, Associate Chief Counsel, Market Participants Division, Commodity Futures Trading Commission, telephone: (202) 418-5496; email: jchachkin@cftc.gov.

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501 *et seq.*, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. 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.¹ To comply with this requirement, the CFTC is publishing notice of the proposed extension of an existing collection of information listed below.

Title: Rules Relating to Regulation of Domestic Exchange-Traded Options, OMB Control Number 3038-0007—Extension of a currently approved collection.

Abstract: The rules require futures commission merchants (FCMs) and introducing brokers (IBs): (1) To provide their customers with standard risk disclosure statements concerning the risk of trading commodity interests; and (2) to retain all promotional material and the source of authority for information contained therein. The purpose of these rules is to ensure that customers are advised of the risks of trading commodity interests and to avoid fraud and misrepresentation. This information collection contains the recordkeeping and reporting requirements needed to ensure regulatory compliance with Commission rules relating to this issue. The disclosure and recordkeeping requirements are necessary to monitor and to verify compliance by FCMs and IBs with their obligations concerning disclosure and promotional material.

With respect to the above collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in section 145.9 of the Commission's regulations.²

The Commission reserves the right, but shall have no obligation to, review, pre-screen, filter, redact, refuse or remove any or all of your submission from <http://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the Information Collection Requirement will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: The Commission estimates the burden of this collection of information as follows:

Estimated Number of Annual Respondents: 1,112.

Estimated Average Annual Burden Hours per Respondent: 34.2.

Estimated Total Annual Burden Hours: 38,030.4.

Frequency of Collection: Occasional.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: August 13, 2021.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2021-17719 Filed 8-17-21; 8:45 am]

BILLING CODE 6351-01-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD-2021-OS-0085]

Privacy Act of 1974; System of Records

AGENCY: Defense Threat Reduction Agency (DTRA), Department of Defense (DoD).

ACTION: Notice of a modified system of records.

SUMMARY: The DTRA is modifying a system of records, titled "Nuclear Test Participants," HDTRA 010. Each year, the DTRA uses this system of records to respond to over 700 atomic veteran radiogenic disease compensation inquiries from the Department of Justice (DOJ) and Department of Veterans Affairs (VA). The DTRA's responses include verification of participation in nuclear testing programs or military operations for presumptive claims, and radiation dose assessments for non-presumptive claims. The intended effect of modifying this SORN is to make updates associated with changes being made to the underlying information system that maintains these records.

DATES: This system of records modification is effective upon publication; however, comments on the Routine Uses will be accepted on or before September 17, 2021. The Routine Uses are effective at the close of the comment period.

ADDRESSES: You may submit comments, identified by docket number and, by any of the following methods:

- *Federal Rulemaking Portal:* <https://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 and docket number 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 <https://www.regulations.gov> as they are received without change, including any

¹ 46 FR 63035 (Dec. 30, 1981).

² 17 CFR 145.9, 74 FR 17395 (Apr. 15, 2009).

personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Pamela Andrews, DTRA Privacy Officer, Officer of the General Counsel, Freedom of Information Act and Privacy Office (FOIA/PA), 8725 John J. Kingman Road, MSC 6201, Fort Belvoir, VA 22060 or by calling (703) 767-1792.

SUPPLEMENTARY INFORMATION:

I. Background

The DTRA is modifying the existing system of records to better reflect changes to the database that houses these records. The following sections of the system of records notice are being updated: security classification, purpose, categories of individuals, categories of records, record source categories, authorities, routine uses, storage, retrievability, safeguards, retention and disposal, system manager(s), notification procedures, record access procedures, and contesting record procedures.

DTRA personnel and other DoD components use these records to help the VA and DOJ respond to claims and to provide data to organizations responsible for studies concerning the health effects of ionizing radiation. These records are used by DTRA employees to respond to over 700 atomic veteran radiogenic disease compensation inquiries from the DOJ and the VA each year. DTRA personnel verify participation in nuclear testing programs or military operations for presumptive claims, and radiation dose assessments for non-presumptive claims. These modifications to the information system will increase DTRA's inquiry response accuracy while decreasing inquiry response time and improving information sharing with other government agencies.

The DoD notices for systems of records subject to the Privacy Act of 1974, as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy, Civil Liberties, and Transparency Division website at <https://dpcl.d.defense.gov/privacy>.

II. Privacy Act

Under the Privacy Act, a "system of records" is a group of records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined as a U.S. citizen or lawful permanent resident.

In accordance with 5 U.S.C. 552a(r) and Office of Management and Budget (OMB) Circular No. A-108, the DoD has provided a report of this system of records to the OMB and to Congress.

Dated: August 12, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

SYSTEM NAME AND NUMBER:

Nuclear Test Participants, HDTRA 010.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Nuclear Test Personnel Review (NTPR) Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060-6201.

SYSTEM MANAGER(S):

NTPR Program Manager, Nuclear Test Personnel Review Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060-6201. Email Address: dtra-ntrp@mail.mil.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2013, "Atomic Energy Act of 1954"; 42 U.S.C. 2210, "Radiation Exposure Compensation Act"; 38 U.S.C. 1154, "Certain Diseases and Disabilities"; 38 CFR 3.309, "Disease Subject to Presumptive Service Connection"; 38 CFR 3.311, "Claims Based on Exposure to Ionizing Radiation"; and E.O. 9397 (SSN), as amended.

PURPOSE(S) OF THE SYSTEM:

These records comprise a comprehensive database containing information about participation and dose information for over 500,000 individuals involved in United States atmospheric nuclear testing (1945-1962), the military occupation forces of Hiroshima and Nagasaki, Japan, or those who were prisoners of war (POWs) in Japan at the conclusion of World War II. The system similarly supports an analogous 50,000 DoD personnel associated with U.S. underground nuclear weapon testing (1951-1992), and 6,000 DoD personnel associated with the radiological clean-up of the Pacific Proving Ground (1960s-1980). The NTRR Program has many elements designed to assist military and civilian test participants, to help the Department of Veterans Affairs (VA) and the Department of Justice (DOJ) in responding to atomic veteran radiogenic disease compensation claims, and to provide information to organizations

responsible for studies concerning the health effects of ionizing radiation. These elements include the following: (a) Researching participation and establishing a register of DoD participants; (b) Collecting and analyzing all known sources of recorded dosimetry and radiation data applicable to participants, and reconstructing doses in cases where recorded doses are unavailable or incomplete; (c) Maintaining a comprehensive database of participation and dose information, along with supporting archival materials and documents; (d) Conducting an extensive public outreach program to ensure maximum interface with the supported participants; (e) Maintaining the history of each U.S. atmospheric nuclear weapons test operation; (f) Supporting studies to determine whether participants experience adverse health effects as a result of their test activities; and (g) Providing accurate and timely responses to requests for information from incoming inquiries.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Veterans and former DoD civilian participants of the U.S. nuclear testing programs from 1945 to 1992; U.S. military occupation forces assigned to Hiroshima or Nagasaki from August 6, 1945 to July 1, 1946; U.S. POWs in Japan at the conclusion of World War II; and DoD participants involved in the cleanup of the Pacific Proving Ground nuclear tests from the 1960s to 1980.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, service number, Social Security Number (SSN), date of birth, place of birth, gender, last known or current address, home/cell phone number, DoD ID number, dates and extent of test participation, radiation exposure data, unit of assignment, medical data, rank, grade, service affiliation, and documentation relative to administrative claims or civil litigation.

RECORD SOURCE CATEGORIES:

Retired Military Personnel records from the National Personnel Records Center, all versions of the US DTRA Form 150 from individuals voluntarily contacting DTRA or other elements of DoD or other Government Agencies by phone or mail. DoD historical records, dosimetry records, and records from the Department of Energy (DOE), the VA, the Social Security Administration, the Internal Revenue Service, and the Department of Health and Human Services (HHS).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, all or a portion of the records or information contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3):

A. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government when necessary to accomplish an agency function related to this system of records.

B. To the appropriate Federal, State, local, territorial, tribal, foreign, or international law enforcement authority or other appropriate entity where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature.

C. To any component of the DOJ for the purpose of representing the DoD, or its components, officers, employees, or members in pending or potential litigation to which the record is pertinent.

D. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when the DoD or other Agency representing the DoD determines that the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

E. To the National Archives and Records Administration (NARA) for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

F. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

G. To appropriate agencies, entities, and persons when (1) the DoD suspects or confirms breach of the system of records; (2) the DoD determines as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DoD (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the DoD's efforts to

respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

H. To another Federal agency or Federal entity, when the DoD determines information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

I. To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

J. To the VA for the purpose of processing claims by individuals who allege service-connected disabilities as a result of participation in nuclear test programs or military operations, as well as litigation actions.

K. To the DOJ and the Department of Labor (DOL) for the purpose of processing claims by individuals alleging job-related disabilities as a result of participation in nuclear test programs or military operations, and for litigation actions.

L. To the DOE for the purpose of identifying DOE employees and contractor personnel who were, or may be in the future, involved in nuclear test programs or military operations and for DOE's use in processing claims or litigation actions.

M. To the HHS and Vanderbilt University for the purpose of conducting epidemiological studies on the effects of ionizing radiation on participants of nuclear test programs.

N. To the Veterans Board on Dose Reconstruction for the purpose of aiding officials reviewing and overseeing the DoD Radiation Dose Reconstruction Program.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records may be stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, or digital media; in agency-owned cloud environments; or in vendor Cloud Service Offerings certified under the Federal Risk and Authorization Management Program (FedRAMP).

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

The records may be retrieved by name, SSN, DoD Identification Number, or any combination of the foregoing.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are permanent. DTRA retains physical and legal custody for 75 years after case termination, then the records are transferred and accessioned to the NARA.

ADMINISTRATIVE, TECHNICAL AND PHYSICAL SAFEGUARDS:

Administrative: Backups secured off-site, encryption of backups containing sensitive data, methods to ensure only authorized personnel access to PII, periodic security audits, and records are limited to person(s) responsible for servicing the record in the performance of their official duties and who are properly screened and cleared for need-to-know. Technical: Encryption of data at rest, firewall, role-based access controls, Virtual Private Network (VPN), Common Access Card (CAC), encryption of data in transit, intrusion detection system (IDS), DoD public key infrastructure certificates, least privilege access, user identification and password. Physical safeguards: Cipher locks, combination locks, key card, security guards, closed circuit (CCTV), identification badges, safes. Security Guards and CCTV are used at some sites. Records are maintained in a controlled facility and entry is restricted by the use of security guards and intrusion alarm systems. Paper records, microfilm/fiche, and computer systems are accessible only by authorized personnel. Access to digital data requires user validation prior to use.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written requests to the Defense Threat Reduction Agency, IT-KT (FOIA/Privacy Office), 8725 John J. Kingman Drive, Ft. Belvoir, VA 22060-6201. Signed written requests should include the individual's full name, telephone number, street address, email address, and name and number of this system of records notice (SORN). In addition, the requestor must provide either a notarized statement or a declaration made in accordance with 28 U.S.C. 1746, using the following format:

If executed outside the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)."

If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury

that the foregoing is true and correct. Executed on (date). (Signature).”

For personal visits to access records at DTRA, the individual will be required to provide a military or civilian identification card.

CONTESTING RECORD PROCEDURES:

The DoD rules for accessing records, contesting contents, and appealing initial Component determinations are contained in 32 CFR part 310, or may be obtained from the system manager.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should follow the instructions for Record Access Procedures above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

August 26, 2009, 74 FR 54975; May 11, 2012, 77 FR 27739.

[FR Doc. 2021-17694 Filed 8-17-21; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN-2021-HQ-0007]

Submission for OMB Review; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: Emergency notice.

SUMMARY: Consistent with the Paperwork Reduction Act of 1995 and its implementing regulations, this document provides notice DoD is submitting an Information Collection Request to the Office of Management and Budget (OMB) to conduct a strategic level engagement survey of the Navy Active Duty population that addresses core measures relating to the health of the force and addresses emergent issues of interest to Navy leadership. This is a biennial survey, initiated in 2019, the results of which inform the Navy’s Health of the Force Report to Congress, congressional testimony, as well as support program and policy assessments. A secondary goal of this survey is to minimize the number of unnecessary and potentially duplicative smaller surveys. DoD requests emergency processing and OMB authorization to collect the information after publication of this notice for a period of six months.

DATES: Comments must be received by August 19, 2021.

ADDRESSES: The Department has requested emergency processing from OMB for this information collection request by 1 day after publication of this notice. Interested parties can access the supporting materials and collection instrument as well as submit comments and recommendations to OMB at www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 1-day Review—Open for Public Comments” or by using the search function. Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT:

Angela Duncan, 571-372-7574, or whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

SUPPLEMENTARY INFORMATION: This survey is targeted at Navy Active Component personnel to gather their input and opinions on key issues of interest to Navy leadership. A scripted briefing report documenting, in detail, the results of the survey will be completed and provided to all those organizations who provided input to the survey. An executive overview brief will be developed and provided to senior leadership. Results from the survey will also be incorporated into the Health of the Force report in November for release in January 2022.

Title; Associated Form; and OMB Number: Navy Health of the Force Survey; OMB Control Number 0703-NHFS.

Type of Request: Emergency.
Number of Respondents: 13,000.
Responses per Respondent: 1.
Annual Responses: 13,000.
Average Burden per Response: 25 minutes.

Annual Burden Hours: 5,417.
Affected Public: None.
Frequency: Biennial.
Respondent’s Obligation: Voluntary.

Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information collected has practical utility; (2) the accuracy of DoD’s estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated

collection techniques or the use of other forms of information technology.

Dated: August 13, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021-17717 Filed 8-17-21; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF EDUCATION

National Assessment Governing Board

Solicitation of Public Comments for Updating the Science Assessment Framework for the 2028 National Assessment of Educational Progress (NAEP)

AGENCY: National Assessment Governing Board, U.S. Department of Education.

ACTION: Notice of opportunity for preliminary public comment for the Science Assessment Framework for the 2028 National Assessment of Educational Progress (NAEP).

SUMMARY: The National Assessment Governing Board (Governing Board) is soliciting public comment for preliminary guidance in updating the Assessment Framework for the 2028 National Assessment of Educational Progress (NAEP) in Science.

SUPPLEMENTARY INFORMATION: The Governing Board is authorized to formulate policy guidelines for NAEP. Section 302(e)(1)(c) of Public Law 107-279 specifies that the Governing Board determines the content to be assessed for each NAEP Assessment. Each NAEP subject area assessment is guided by a framework that defines the scope of the domain to be measured by delineating the knowledge and skills to be tested at each grade and subject, the format of the assessment, and the achievement level descriptions—guiding assessments that are valid, reliable, and reflective of widely accepted professional standards. The NAEP Science Assessment Framework was last revised in 2005 (and most recently used for the 2019 NAEP Science Assessment). Comments received in response to this notice will be utilized to inform Governing Board decisions on the extent of revisions needed to update the NAEP Science Assessment Framework. A Governing Board charge to launch the framework revision process is anticipated at the March 2022 quarterly Board meeting.

Public and private parties and organizations are invited to provide written comments and recommendations relative to the current framework, adopted in 2005. Comments

should specifically address: (a) Whether the 2019 NAEP Science Framework needs to be updated; (b) if the framework needs to be updated, why a revision is needed; and (c) what should a revision to the framework include? This notice sets forth the review schedule and provides information for accessing additional materials that will be informative and useful for this review.

Assessment and Item Specifications elaborate on the framework as guidance for item development conducted by the National Center for Education Statistics (NCES) and the NAEP assessment development contractor(s). The framework development and update process also produces recommendations for contextual variables, which supports NCES' development of the questionnaires administered to students, teachers, and schools to help the public understand the achievement results in each subject. By engaging NAEP's audiences, partners, and stakeholders in the panels that provide recommendations for NAEP frameworks and by seeking public comment, NAEP frameworks reflect content valued by the public as important to measure. Additional information on the Governing Board's work in developing NAEP Frameworks and Specifications can be found at <https://www.nagb.gov/naep-frameworks/frameworks-overview.html>.

All responses will be taken into consideration before finalizing the recommendations for updating the NAEP Science Assessment Framework. Once finalized, recommendations will be used to guide a framework update process, if an update is needed for the 2028 NAEP Science Assessment.

Comments shall be submitted via email to nagb@ed.gov with the email subject header NAEP Science Framework no later than 5:00 p.m. Eastern Time on Thursday, September 30. It is anticipated that public comments will be shared and discussed publicly in upcoming Governing Board meetings and materials. *When providing comment, please indicate if you are not comfortable with your name and affiliation being included with the comments that will be shared publicly by the Governing Board in its deliberations.*

Additional information (including the materials referenced below) can be found on the project website at <https://www.nagb.gov/naep-frameworks/science/science-framework-feedback.html>.

Existing Science Framework for the NAEP

The existing framework (adopted in 2005) can be downloaded from the Governing Board website at <https://www.nagb.gov/naep-frameworks/science.html>.

Governing Board's Periodic Review and Updating of NAEP Frameworks

Governing Board policy articulates the Board's commitment to a comprehensive, inclusive, and deliberative process to determine and update the content and format of all NAEP assessments. For each NAEP assessment, this process results in a NAEP framework, outlining what is to be measured and how it will be measured. Periodically, the Governing Board reviews existing NAEP frameworks to determine if changes are warranted. Each NAEP framework development and update process considers a wide set of factors, including but not limited to reviews of recent research on teaching and learning, changes in state and local standards and assessments, and the latest perspectives on the nation's future needs and desirable levels of achievement.

In 2021, the Board is initiating a preliminary review of the NAEP Science Framework. The Governing Board's NAEP Science Framework review will use general public comment collected through this notice as well as expert commentary to determine whether a framework update is required and the type of updates that may be needed. Learn more about framework update processes at https://www.nagb.gov/content/dam/nagb/en/documents/naep/NAEP-Frameworks-FAQ_FINAL.pdf.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the Adobe website. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: Pub. L. 107–279, Title III—National Assessment of Educational Progress § 301.

Lesley Muldoon,

Executive Director, National Assessment Governing Board (NAGB), U. S. Department of Education.

[FR Doc. 2021–17676 Filed 8–17–21; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Agency Information Collection Activities: National Mail Voter Registration Form

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice of emergency reinstatement.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the U.S. Election Assistance Commission (EAC) gives notice that it is requesting from the Office of Management and Budget (OMB) an emergency reinstatement of the National Mail Voter Registration form. Section 9(a) of the NVRA and Section 802 of HAVA requires the responsible agency to maintain a national mail voter registration form for U.S. citizens that want to register to vote, to update registration information due to a change of name, make a change of address or to register with a political party by returning the form to their state election office.

DATES: Comments must be received no later than 5 p.m. Eastern Standard Time on August 31, 2021.

ADDRESSES: You may submit written statements with respect to the reinstatement of the National Mail Voter Registration form no later than 5 p.m. on August 31, 2021. Statements may be sent via email to research@eac.gov and via standard mail addressed to the U.S. Election Assistance Commission, 633 3rd Street NW, Suite 200, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Nichelle Williams, Telephone: (202) 924–1312.

SUPPLEMENTARY INFORMATION:

I. National Mail Voter Registration Form

Persons wishing to register to vote may use the National Mail Voter Registration form (“Federal form” or “form”) to apply for voter registration. After completing the form, an applicant submits her/his form to their respective state election office for processing.

States covered by the NVRA process the information from the form to register an applicant to vote. Neither EAC nor any other Federal agency processes or collects any information from the Federal form that a registration applicant submits to a state. Rather, EAC prescribes the Federal form, and states collect and record the information applicants submit. The Federal form is composed of the registration application, instructions for completing the application (General Instructions and Application Instructions), and State-specific instructions that identify each state's particular requirements. A copy of the current form in English and 14 additional translated languages is available on EAC's website, at <https://www.eac.gov/voters/national-mail-voter-registration-form>.

Nichelle Williams,

Director of Research, U.S. Election Assistance Commission.

[FR Doc. 2021-17733 Filed 8-17-21; 8:45 am]

BILLING CODE 6820-KF-P

DEPARTMENT OF ENERGY

Assessing the National and International Standing of BER Basic Research

AGENCY: Office of Science, Biological and Environmental Research Program, Department of Energy.

ACTION: Request for information.

SUMMARY: The Biological and Environmental Research (BER) Program, as DOE's coordinating office for research on biological systems, bioenergy, environmental science, and Earth system science, is seeking input on technical and logistical pathways that would enhance the BER research portfolio in comparison to similar international research efforts.

DATES: Written comments and information are requested on or before October 31, 2021.

ADDRESSES: Interested persons may submit comments by email only. Comments must be sent to BERACRFI@science.doe.gov with the subject line "BER research benchmarking".

FOR FURTHER INFORMATION CONTACT: Dr. Tristram O. West, (301) 903-5155, Tristram.west@science.doe.gov.

SUPPLEMENTARY INFORMATION: A charge was issued from the Director of Office of Science on October 8, 2020, to the BER Advisory Committee (BERAC) to assess BER's standing in relation to related research efforts nationally and internationally, and to consider strategies that would increase BER's

ability to conduct world-class science in core BER research areas. The Director's charge letter may be found here: <https://science.osti.gov/ber/berac/Reports/Current-BERAC-Charges>.

The information collected through this request, in addition to other informational sources, may be used by BERAC to develop strategies to further strengthen BER's research capabilities. The conclusions drawn from BERAC's effort are expected to serve as a benchmark for BER's standing in core research areas and provide strategies for improvement where appropriate.

Request for Information

The objective of this request for information is to gather information on BER's standing in relation to related research efforts occurring nationally and internationally, and how BER might increase its stature in conducting world-class basic science currently supported by BER (<https://science.osti.gov/ber/Research>). Supported research includes Atmospheric Science; Earth and Environmental System Modeling; Environmental Science; Bioenergy and Bioproducts; Plant and Microbial Genomics; Data Analytics and Management; and Scientific User-focused Infrastructure (*i.e.*, DOE User Facilities, Computational Knowledgebase Platforms, Community Observational and Analytical Resources). Information is specifically requested on the status of current capabilities, partnerships, funding mechanisms, and workforce development specific to one or more of the aforementioned research areas. Answers or information related, but not limited, to the following questions are specifically requested:

- Within the BER-supported topical research areas and facility capabilities, in which areas and capabilities, presently or in the foreseeable future, does BER lead in the international community, and in which areas does leadership require strengthening? In identifying these areas, please consider their critical mission relevance, recent history, the status quo, observable trends, and evidence-based projections.

- Are there key international partnerships that could strengthen BER science output and increase global visibility of BER?

- Is there a preferred optimization for organizing research, collaboration, and funding mechanisms among labs, universities, and other federal agencies to preserve and foster U.S. leadership with resource constraints? Are there other key efficiencies and balances that should be considered and modified to

improve U.S. leadership in BER research areas?

- How can BER programs and facilities be structured and managed to create incentives that will attract and retain talented people deciding whether to pursue a scientific career, as well as mid-career scientists considering whether to stay in the U.S.?

- What are the key opportunities for BER in attracting and enhancing careers in BER-supported scientific fields?

While the questions provided above can help guide thinking on this topic, any input is welcome which may help DOE assess BER's international standing in the core research areas. The information provided through this request should be presented as specific strategies which DOE Office of Science could implement and track.

Signing Authority

This document of the Department of Energy was signed on August 11, 2021, by Dr. J. Stephen Binkley, Acting Director, Office of Science, pursuant to delegated authority from the Secretary of Energy. The document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on August 12, 2021.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2021-17658 Filed 8-17-21; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3562-026]

KEI (Maine) Power Management (III) LLC; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application*: Subsequent Minor License.

b. *Project No.*: 3562–026.

c. *Date filed*: July 29, 2021.

d. *Applicant*: KEI (Maine) Power Management (III) LLC (KEI Power).

e. *Name of Project*: Barker Mill Upper Hydroelectric Project.

f. *Location*: On the Little Androscoggin River, in the City of Auburn, Androscoggin County, Maine. The project does not occupy any federal land.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact*: Lewis C. Loon, General Manager, KEI (USA) Power Management Inc., 423 Brunswick Avenue, Gardiner, ME 04345; phone at (207) 203–3025; email at LewisC.Loan@krueger.com.

i. *FERC Contact*: John Matkowski at (202) 502–8576, or john.matkowski@ferc.gov.

j. *Cooperating agencies*: Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See*, 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: September 27, 2021.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at <https://ferconline.ferc.gov/FEROnline.aspx>. For assistance, please contact FERC Online Support at

FEROnlineSupport@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. All filings must clearly identify the project name and docket number on the first page: Barker Mill Upper Project (P–3562–026).

m. The application is not ready for environmental analysis at this time.

n. *Project Description*: The existing Barker Mill Upper Project consists of: (1) A 41-acre impoundment with a maximum storage capacity of 255 acre-feet at a normal maximum water surface elevation of 192 feet NAVD 88; (2) a dam consisting of (starting from the west bank): (a) 43-foot-long concrete abutment; (b) a 40-foot-long gated spillway structure consisting of two, 18-foot high, 15-foot-wide steel Tainter gates; (c) an 86-foot-long, 24-foot-high stone masonry with concrete overlay overflow spillway with 3-foot-high wooden flashboards and a crest elevation of 192 feet NAVD 88 at the top of the flashboards (189 feet NAVD 88 when the flashboards are lowered); (d) a 31-foot-long concrete intake structure; and, (e) a 27-foot-long underground abutment; (3) a powerhouse containing a single 950-killowatt turbine-generator unit; (4) a tailrace; (5) a 50-foot-long, 12.47-kilovolt transmission line; and (10) appurtenant facilities.

The Barker Mill Upper Project is operated in run-of-river mode. The average annual generation is estimated to be of 4,681 megawatt-hours.

o. In addition to publishing the full text of this notice in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this notice, as well as other documents in the proceeding (e.g., license application) 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 (P–3562). 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 FEROnlineSupport@ferc.gov or call toll-free, (866) 208–3676 or (202) 502–8659 (TTY).

You may also register online at <https://ferconline.ferc.gov/FEROnline.aspx> to be notified via

email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. *Procedural schedule*: The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter (if necessary)—September 2021

Request Additional Information (if needed)—September 2021

Issue Notice of Acceptance—December 2021

Issue Scoping Document 1 for

comments—January 2022

Issue Scoping Document 2—March 2022

Issue Notice of Ready for Environmental Analysis—March 2022

q. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: August 12, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–17701 Filed 8–17–21; 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: EC21–113–000.

Applicants: Covanta Holding Corporation, Covert Mergeco, Inc.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Covanta Holding Corporation.

Filed Date: 8/11/21.

Accession Number: 20210811–5198.

Comment Date: 5 p.m. ET 9/1/21.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG21–216–000.

Applicants: Caddo Wind, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Caddo Wind LLC.

Filed Date: 8/11/21.

Accession Number: 20210811–5092.

Comment Date: 5 p.m. ET 9/1/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–1742–002.

Applicants: San Diego Gas & Electric Company.

Description: Compliance filing: Order No. 864 Compliance Filing to be effective 1/27/2020.

Filed Date: 8/12/21.

Accession Number: 20210812-5002.

Comment Date: 5 p.m. ET 9/2/21.

Docket Numbers: ER20-1992-002.

Applicants: Public Service Company of New Mexico.

Description: Compliance filing: PNM Response to June 28, 2021 Deficiency Letter to be effective N/A.

Filed Date: 8/12/21.

Accession Number: 20210812-5121.

Comment Date: 5 p.m. ET 9/2/21.

Docket Numbers: ER21-1280-002.

Applicants: Southern California Edison Company.

Description: Compliance filing: SCE's Compliance Filing—Morongo WOD Formula Rate Protocols to be effective 5/5/2021.

Filed Date: 8/12/21.

Accession Number: 20210812-5050.

Comment Date: 5 p.m. ET 9/2/21.

Docket Numbers: ER21-2289-000.

Applicants: Clover Creek Solar, LLC.
Description: Supplement to June 30, 2021 Market Based Rate Application of Clover Creek Solar, LLC under ER21-2289. Also submitted, Second Supplement to June 30, 2021 Clover Creek Solar, LLC tariff filing.

Filed Date: 8/4/21.

Accession Number: 20210804-5127; 20210811-5192.

Comment Date: 5 p.m. ET 8/23/21.

Docket Numbers: ER21-2653-000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: Amend GIA & DSA (SA 667-668) Wind Stream Operations, LLC & Terminate 6 Agmts to be effective 10/11/2021.

Filed Date: 8/11/21.

Accession Number: 20210811-5099.

Comment Date: 5 p.m. ET 9/1/21.

Docket Numbers: ER21-2654-000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2021-08-11_SA 3391 Ameren IL-Maple Flats Solar Energy Center (J813) to be effective 8/2/2021.

Filed Date: 8/11/21.

Accession Number: 20210811-5118.

Comment Date: 5 p.m. ET 9/1/21.

Docket Numbers: ER21-2655-000.

Applicants: Southwestern Public Service Company.

Description: § 205(d) Rate Filing: SPS-Llano-LGIA-Second Amnd-101-0.0.0 to be effective 10/10/2021.

Filed Date: 8/11/21.

Accession Number: 20210811-5169.

Comment Date: 5 p.m. ET 9/1/21.

Docket Numbers: ER21-2656-000.

Applicants: Solios Power LLC.

Description: Tariff Amendment: Cancellation of MBR Tariff to be effective 8/13/2021.

Filed Date: 8/12/21.

Accession Number: 20210812-5000.

Comment Date: 5 p.m. ET 9/2/21.

Docket Numbers: ER21-2657-000.

Applicants: MET West Trading LLC.

Description: Tariff Amendment: Cancellation of MBR Tariff to be effective 8/13/2021.

Filed Date: 8/12/21.

Accession Number: 20210812-5001.

Comment Date: 5 p.m. ET 9/2/21.

Docket Numbers: ER21-2658-000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 021-08-12_SA 3193 Ameren Illinois-Hickory Solar 1st Rev GIA (J644) to be effective 7/29/2021.

Filed Date: 8/12/21.

Accession Number: 20210812-5036.

Comment Date: 5 p.m. ET 9/2/21.

Docket Numbers: ER21-2659-000.

Applicants: Southern California Edison Company.

Description: Tariff Amendment: Notices of Termination SA Nos. 36 and 37 with CPCC to be effective 10/12/2021.

Filed Date: 8/12/21.

Accession Number: 20210812-5040.

Comment Date: 5 p.m. ET 9/2/21.

Docket Numbers: ER21-2660-000.

Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.

Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): 2021-08-12_SA 3686 Ameren Illinois-Lincoln Land Construction Agreement to be effective 10/12/2021.

Filed Date: 8/12/21.

Accession Number: 20210812-5041.

Comment Date: 5 p.m. ET 9/2/21.

Docket Numbers: ER21-2661-000.

Applicants: Central Maine Power Company.

Description: § 205(d) Rate Filing: Schedule 20A Service Agreement to be effective 11/1/2020.

Filed Date: 8/12/21.

Accession Number: 20210812-5055.

Comment Date: 5 p.m. ET 9/2/21.

Docket Numbers: ER21-2662-000.

Applicants: The United Illuminating Company.

Description: § 205(d) Rate Filing: Schedule 20A Service Agreement to be effective 11/1/2020.

Filed Date: 8/12/21.

Accession Number: 20210812-5057.

Comment Date: 5 p.m. ET 9/2/21.

Docket Numbers: ER21-2663-000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: Tariff Amendment: Notice of Cancellation of Rate Schedule FERC No. 98 to be effective 8/13/2021.

Filed Date: 8/12/21.

Accession Number: 20210812-5060.

Comment Date: 5 p.m. ET 9/2/21.

Docket Numbers: ER21-2664-000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Amendment to Rate Schedule FERC No. 60 to be effective 8/13/2021.

Filed Date: 8/12/21.

Accession Number: 20210812-5062.

Comment Date: 5 p.m. ET 9/2/21.

Docket Numbers: ER21-2665-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA/CSA, Nos. 5852 and 5982; Queue No. AC2-079 to be effective 11/2/2020.

Filed Date: 8/12/21.

Accession Number: 20210812-5090.

Comment Date: 5 p.m. ET 9/2/21.

Docket Numbers: ER21-2666-000.

Applicants: Alabama Power Company.

Description: Tariff Amendment: Pike Road Farm LGIA Termination Filing to be effective 8/12/2021.

Filed Date: 8/12/21.

Accession Number: 20210812-5094.

Comment Date: 5 p.m. ET 9/2/21.

Docket Numbers: ER21-2667-000.

Applicants: Alabama Power Company.

Description: § 205(d) Rate Filing: Madden Solar Center LGIA Filing to be effective 7/29/2021.

Filed Date: 8/12/21.

Accession Number: 20210812-5095.

Comment Date: 5 p.m. ET 9/2/21.

Docket Numbers: ER21-2668-000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: Service Agreement with Cald BESS LLC SA No. 1151 to be effective 10/12/2021.

Filed Date: 8/12/21.

Accession Number: 20210812-5107.

Comment Date: 5 p.m. ET 9/2/21.

Docket Numbers: ER21-2669-000.

Applicants: Basin Electric Power Cooperative.

Description: Tariff Amendment: Basin Electric Notice of Cancellation for Service Agreement No. 29 to be effective 7/27/2021.

Filed Date: 8/12/21.

Accession Number: 20210812-5116.

Comment Date: 5 p.m. ET 9/2/21.

Docket Numbers: ER21-669-003.

Applicants: Morongo Transmission LLC.

Description: Compliance filing: Compliance Filing to Update Inputs to Morongo Transmission Tariff to be effective 5/15/2021.

Filed Date: 8/11/21.

Accession Number: 20210811–5182.

Comment Date: 5 p.m. ET 9/1/21.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH21–16–000.

Applicants: Axium Infrastructure Inc.

Description: Axium Infrastructure Inc. submits FERC–65B Waiver Notification and Notice of Material Change in Facts.

Filed Date: 8/11/21.

Accession Number: 20210811–5197.

Comment Date: 5 p.m. ET 9/1/21.

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: August 12, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–17706 Filed 8–17–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3442–029]

City of Nashua, New Hampshire; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent License.

b. *Project No.:* 3442–029.

c. *Date Filed:* July 30, 2021.

d. *Applicant:* City of Nashua (the City).

e. *Name of Project:* Mine Falls Hydroelectric Project.

f. *Location:* The existing project is located on the Nashua River in Hillsborough County, New Hampshire. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* James W. Donchess, Mayor, City of Nashua, 229 Main Street, P.O. Box 2019, Nashua, NH 03060; Telephone (603) 589–3260.

i. *FERC Contact:* Khatoon Melick, (202) 502–8433 or khatoon.melick@ferc.gov.

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See*, 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: September 28, 2021. The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at <https://ferconline.ferc.gov/FERCOOnline.aspx>. For assistance, please contact FERC Online Support at FERCOOnlineSupport@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. All filings must clearly identify the project name and docket number on the first page: Mine Falls Hydroelectric Project (P–3442–029).

m. The application is not ready for environmental analysis at this time.

n. *Project Description:* The existing Mine Falls Project consists of: (1) A 242-acre impoundment with a normal storage volume of 1,970 acre-feet and a normal headpond elevation of 158.76 ft (NAVD 88); (2) a rock filled concrete cap, variable in height dam with an approximately 132-foot-long spillway at a permanent crest elevation of 154.66 feet, and nominal 4.0-foot-high wooden flashboards maintaining a normal headpond elevation of 158.76 feet; (3) a 22-foot-wide and 170-foot-long reinforced concrete power canal located between the right bank of the Nashua river and the single flood sluice gate; (4) two 12.5-foot-long wooden stoplog bays located immediately upstream of the intake to the right of the concrete capped spillway (viewed facing downstream) with a 10-foot-wide gate and a short spillway section above the gate; (5) a 40-foot-wide, 20-foot-high intake structure with steel trashrack with two square-to-round transition openings that feed the two penstocks that terminate at the two turbines; (6) two 64-foot-long, 104-inch-diameter steel penstocks between the intake and turbine units; (7) a 44-foot-long, 44-foot-wide multi-level reinforced concrete powerhouse containing two 1,500 kilowatt turbine-generator units; (8) an approximately 22-foot-wide, 1,100-foot-long tailrace that is a channel cut into the Nashua river bedrock downstream of the powerhouse that returns water back into the Nashua river; (9) a 278-foot-long bypass reach extending from the spillway crest and stoplog bays to the downstream of the powerhouse at the tailrace, bypassing 20 cubic feet per second (cfs) of water for environmental flows; (10) an upstream fish passage; (11) a 610-foot-long, 34.5-kilovolt underground transmission line connects the generator transformer to the interconnect point; and (12) appurtenant facilities. The estimated gross head of the project is 38 feet. The powerplant has a maximum nameplate capacity of 3 MW. The project generates an annual average of 12,563 megawatt-hours.

The City proposes to continue to operate the project in a run-of-river mode with no storage or flood control capacity. The project operates within a flow range of 180 cfs (150 cfs minimum hydraulic capacity to start a single

turbine, plus 20 cfs minimum bypass release at the dam and an additional 10 cfs flow routed through the Mill Pond gatehouse to the Mill Pond and canal) and 1,100 cfs (maximum hydraulic capacity of the plant—two turbines combined) or a river flow of 1,130 cfs. Any flow above the capacity of the turbines plus minimum bypass flow and Mill pond diversion is spilled over the dam spillway and through the overflow section of the flood sluice gate.

o. In addition to publishing the full text of this notice in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this notice, as well as other documents in the proceeding (e.g., license application) 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 (P-3442). 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, (866) 208-3676 or (202) 502-8659 (TTY).

You may also register online at <https://ferconline.ferc.gov/FERCOnline.aspx> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. *Procedural Schedule*: The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Issue Deficiency Letter.	September 2021.
Request Additional Information.	September 2021.
Issue Notice of Acceptance.	January 2022.
Issue Scoping Document 1 for Comments.	January 2022.
Comments on Scoping Document 1 Due.	March 2022.
Issue Scoping Document 2.	April 2022.
Issue Notice of Ready for Environmental Analysis.	April 2022.

q. Final amendments to the application must be filed with the

Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: August 12, 2021.

Kimberly D. Bose,
Secretary.

[FR Doc. 2021-17700 Filed 8-17-21; 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:

Filings Instituting Proceedings

Docket Numbers: RP21-1030-000.
Applicants: Fieldwood Energy LLC, Fieldwood Energy Offshore LLC, QuarterNorth Energy LLC, GOM Shelf LLC.

Description: Joint Petition of Fieldwood Energy LLC et al for Limited Waiver of "shipper-must-have-title" Policy, Request for Expedited Action and Shortened Comment Period.

Filed Date: 8/11/21.

Accession Number: 20210811-5078.

Comment Date: 5 p.m. ET 8/18/21.

Docket Numbers: RP21-1031-000.

Applicants: Northern Natural Gas Company.

Description: § 4(d) Rate Filing: 202108012 Carlton Flow Obligation to be effective 11/1/2021.

Filed Date: 8/12/21.

Accession Number: 20210812-5043.

Comment Date: 5 p.m. ET 8/24/21.

Docket Numbers: RP21-1032-000.

Applicants: DBM Pipeline, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate Filing to be effective 8/1/2021.

Filed Date: 8/12/21.

Accession Number: 20210812-5084.

Comment Date: 5 p.m. ET 8/24/21.

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: August 12, 2021.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2021-17707 Filed 8-17-21; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21-2652-000]

Caddo Wind, 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 Caddo Wind, 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 September 1, 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 TTY, (202) 502-8659.

Dated: August 12, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021-17708 Filed 8-17-21; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL21-95-000]

Kendall County Solar Project, LLC v. PJM Interconnection, L.L.C.; Notice of Complaint

Take notice that on August 9, 2021, pursuant to sections 206, 306, and 309 of the Federal Power Act (FPA), 16 U.S.C. 824e, 825e, and 825h and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, Kendall County Solar Project, LLC (Kendall County Solar or Complainant) filed a formal complaint against PJM Interconnection, L.L.C. (PJM or Respondent), alleging that PJM has failed to follow its Open Access Transmission Tariff and has processed Kendall County Solar's Interconnection Request in an unjust, unreasonable, unduly discriminatory, and preferential manner, all as more fully explained in its complaint.

The Complainant certifies that copies of the complaint were served on the contacts listed for Respondent in the Commission's list of Corporate Officials.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainant.

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.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at FERCOnlineSupport@ferc.gov, or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

Comment Date: 5:00 p.m. Eastern Time on August 30, 2021.

Dated: August 12, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021-17699 Filed 8-17-21; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4718-039]

Cocheco Falls Associates; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 4718-039.

c. *Date Filed:* December 29, 2020.

d. *Applicant:* Cocheco Falls Associates (CFA).

e. *Name of Project:* Cocheco Falls Dam Project.

f. *Location:* On the Cocheco River in the city of Dover, Strafford County, New Hampshire. The project does not occupy federal land.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)-825(r).

h. *Applicant Contact:* Mr. John Webster, Cocheco Falls Associates, P.O. Box 178, South Berwick, ME 03908; Phone at (207) 384-5334, or email at Hydromagt@gwi.net.

i. *FERC Contact:* Amy Chang at (202) 502-8250, or amy.chang@ferc.gov.

j. *Deadline for filing motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at <https://ferconline.ferc.gov/FERCOnline.aspx>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <https://ferconline.ferc.gov/QuickComment.aspx>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888

First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P-4718-039.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

The Council on Environmental Quality (CEQ) issued a final rule on July 15, 2020, revising the regulations under 40 CFR parts 1500-1518 that federal agencies use to implement the National Environmental Policy Act (NEPA) (see Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 FR 43304). The Final Rule became effective on and applies to any NEPA process begun after September 14, 2020. Commission staff intends to conduct its NEPA review in accordance with CEQ's new regulations.

l. *Project Description:* The existing Cochecho Falls Dam Project consists of: (1) A 150-foot-long, 13.5-foot-high stone masonry arch dam that includes the following sections: (a) A 4-foot-long left abutment section; (b) a 140-foot-long spillway section with 24-inch-high flashboards, a 5-foot-wide, 10-foot-high low-level outlet gate, and a crest elevation of 36.25 feet National Geodetic Vertical Datum of 1929 (NGVD29) at the top of the flashboards; and (c) a 6-foot-long right abutment section with a 4-foot-wide, 9-foot-high debris sluice gate; (2) an impoundment with a surface area of 20 acres and a storage capacity of 150 acre-feet at an elevation of 36.25 feet NGVD29; (3) a 64-foot-wide, 10-foot-high intake structure equipped with a trashrack with 1-inch clear bar spacing; (4) an 8.5-foot-diameter, 184-foot-long gated steel penstock that trifurcates into three 5-foot-diameter, 8-foot-long sections, each controlled by a 5-foot-diameter butterfly valve; (5) a 40-foot-long, 40-foot-wide concrete and brick masonry powerhouse containing three 238-kilowatt (kW) vertical Flygt submersible turbine-generator units for a total installed capacity of 714 kW; (6)

a 40-foot-long, 40-foot-wide tailrace that discharges into the Cochecho River; (7) a 0.48/34.5-kilovolt (kV) step-up transformer and a 1,000-foot-long, 34.5-kV underground transmission line that connects the project to the local utility distribution system; and (8) appurtenant facilities.

CFA voluntarily operates the project in a run-of-river mode using an automatic pond level control system to regulate turbine operation, such that outflow from the project approximates inflow. The project creates an approximately 200-foot-long bypassed reach of the Cochecho River.

Downstream fish passage is provided by a bypass facility located on the left side of the dam that consist of a 5.6-foot-wide, 7-foot-long fish collection box, a trashrack with 6-inch clear bar spacing, and a 24-inch-diameter PVC fish passage pipe. Upstream fish passage is provided by a Denil fish ladder located on the right side of the dam. The Denil fish ladder is owned and maintained by the New Hampshire Fish and Game Department, and is not a project facility.

Article 25 of the current license, as amended on September 24, 2002, requires a minimum flow release to the bypassed reach of: (1) 20 cubic feet per second (cfs) through the fish ladder from April 15-June 30; (2) 20 cfs through the trash sluiceway from April 15-June 15, to attract anadromous fish to the fish ladder; and (3) 20 cfs through the downstream fish passage facility from April 15 until ice forms on the river. The average annual energy production from 2014 to 2018 was 1,438 megawatt-hours.

CFA proposes to: (1) Continue to operate the project in a run-of-river mode; (2) continue to facilitate upstream and downstream fish passage by providing the minimum flows required by the current license; (3) design and install an upstream eel passage facility within 4 years of the effective date of a subsequent license; and (4) consult with the New Hampshire State Historic Preservation Officer before beginning any land-disturbing activities or alterations to known historic structures within the project boundary.

m. A copy of the application can be viewed on the Commission's website at <https://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. For assistance, contact FERC Online Support.

n. 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, and .214. 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.

All filings must: (1) Bear in all capital letters the title "PROTEST," "MOTION TO INTERVENE," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions, or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at <https://www.ferc.gov/ferc-online/overview> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. *The applicant must file no later than 60 days following the date of issuance of this notice:* (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification. Please note that the certification request must comply with 40 CFR 121.5(b), including documentation that a pre-filing meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request. Please also note that the certification request must be sent to the certifying authority and to the Commission concurrently.

p. *Procedural Schedule:* The application will be processed according

to the following schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Deadline for filing interventions, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions.	October 2021.
Deadline for filing reply comments	November 2021.

q. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Dated: August 12, 2021.

Kimberly D. Bose,
Secretary.

[FR Doc. 2021-17697 Filed 8-17-21; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD21-8-00]

Technical Conference on Reassessment of the Electric Quarterly Report Requirements; Notice of Technical Conference

Take notice that on October 14, 2021, the Federal Energy Regulatory Commission (Commission) will convene a staff-led technical conference via webcast as part of a reassessment of the Electric Quarterly Report (EQR) requirements. A supplemental notice will be issued prior to the conference with further details regarding the agenda, meeting registration information, and electronic log-in information.

The purpose of this technical conference is to provide a forum for Commission staff, filers, and data users to discuss potential changes to the current EQR data fields. This technical conference is the third in a series of conferences related to a reassessment of the EQR requirements.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to accessibility@ferc.gov or call toll free 1-866-208-3372 (voice) or 202-502-8659 (TTY), or send a FAX to 202-208-2106 with the required accommodations.

For more information about the EQR technical conference, please contact Jeff Sanders of the Commission's Office of Enforcement at (202) 502-6455, or send an email to EQR@ferc.gov. Additional information will also be provided on the EQR web page.

Dated: August 12, 2021.

Kimberly D. Bose,
Secretary.

[FR Doc. 2021-17698 Filed 8-17-21; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2021-0146; FRL-8682-03-OCSPF]

Certain New Chemicals or Significant New Uses; Statements of Findings for June 2021

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Toxic Substances Control Act (TSCA) requires EPA to publish in the **Federal Register** a statement of its findings after its review of certain TSCA notices when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to premanufacture notices (PMNs), microbial commercial activity notices (MCANs), and significant new use notices (SNUNs) submitted to EPA under TSCA. This document presents statements of findings made by EPA on such submissions during the period from June 1, 2021 to June 30, 2021.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Rebecca Edelstein, New Chemicals Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: 202-564-1667; email address: Edelstein.rebecca@epa.gov.

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitters of the PMNs addressed in this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA-HQ-OPPT-2021-0146, is available at <http://www.regulations.gov> or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280.

Due to the public health concerns related to COVID-19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit <https://www.epa.gov/dockets>.

II. What action is the Agency taking?

This document lists the statements of findings made by EPA after review of notices submitted under TSCA section 5(a) that certain new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment. This document presents statements of findings made by EPA during the period from June 1, 2021 to June 30, 2021.

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

TSCA section 5(a)(3) requires EPA to review a TSCA section 5(a) notice and

make one of the following specific findings:

- The chemical substance or significant new use presents an unreasonable risk of injury to health or the environment;
- The information available to EPA is insufficient to permit a reasoned evaluation of the health and environmental effects of the chemical substance or significant new use;
- The information available to EPA is insufficient to permit a reasoned evaluation of the health and environmental effects and the chemical substance or significant new use may present an unreasonable risk of injury to health or the environment;
- The chemical substance is or will be produced in substantial quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance; or
- The chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment.

Unreasonable risk findings must be made without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially

exposed or susceptible subpopulation identified as relevant under the conditions of use. The term “conditions of use” is defined in TSCA section 3 to mean “the circumstances, as determined by the Administrator, under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of.”

EPA is required under TSCA section 5(g) to publish in the **Federal Register** a statement of its findings after its review of a TSCA section 5(a) notice when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to PMNs, MCANs, and SNUNs submitted to EPA under TSCA section 5.

Anyone who plans to manufacture (which includes import) a new chemical substance for a non-exempt commercial purpose and any manufacturer or processor wishing to engage in a use of a chemical substance designated by EPA as a significant new use must submit a notice to EPA at least 90 days before commencing manufacture of the new chemical substance or before engaging in the significant new use.

The submitter of a notice to EPA for which EPA has made a finding of “not likely to present an unreasonable risk of injury to health or the environment” may commence manufacture of the chemical substance or manufacture or processing for the significant new use notwithstanding any remaining portion of the applicable review period.

IV. Statements of Administrator Findings Under TSCA Section 5(a)(3)(C)

In this unit, EPA provides the following information (to the extent that such information is not claimed as Confidential Business Information (CBI)) on the PMNs, MCANs and SNUNs for which, during this period, EPA has made findings under TSCA section 5(a)(3)(C) that the new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment:

- EPA case number assigned to the TSCA section 5(a) notice.
- Chemical identity (generic name if the specific name is claimed as CBI).
- Website link to EPA’s decision document describing the basis of the “not likely to present an unreasonable risk” finding made by EPA under TSCA section 5(a)(3)(C).

EPA case No.	Chemical identity	Website link
J-21-0012	Yeast that has been stably modified for the production of an agricultural product (generic).	https://www.epa.gov/system/files/documents/2021-07/j-21-0012_determination_non-cbi_final_1.pdf .
J-21-0013	Yeast that has been stably modified for the production of an agricultural product (generic).	https://www.epa.gov/system/files/documents/2021-07/j-21-0013_determination_non-cbi_final.pdf .
P-21-0005	Carbonmonocyclic alkene polymer with alkyl alkenoate, alkyl alkenoate, alkyl alkenoate and polyalkyldiene alkenoate. (generic).	https://www.epa.gov/system/files/documents/2021-08/p-21-0005_determination_non-cbi_final_2.pdf .
P-21-0078	Phenol, polymer with alkyl-(alkylalkylenyl)cyclohexene, mixed dialkylcyclohexadienes, mixed alkyl-(alkylalkylidene)cyclohexenes and 3,7,7-trimethylbicyclo[4.1.0]hept-3-ene (generic).	https://www.epa.gov/system/files/documents/2021-07/p-21-0078_determination_non-cbi_final_0.pdf .
P-21-0095	Alkene Homopolymer Hydrogenated (generic)	https://www.epa.gov/system/files/documents/2021-07/p-21-0095_determination_non-cbi_final_0.pdf .
P-21-0039, P-21-0040, P-21-0041.	(P-21-0039) 1,2,4,5-Benzenetetracarboxamide, N1,N2,N4,N5-tetrahexyl-; CASRN: 1142038-73-0, (P-21-0040) 1,2,4,5-Benzenetetracarboxamide, N1,N2,N4,N5-tetraoctyl-; CASRN: 1416081-40-7, (P-21-0041) 1,2,4,5-Benzenetetracarboxamide, N1,N2,N4,N5-tetradodecyl-; CASRN: 911127-84-9.	https://www.epa.gov/system/files/documents/2021-07/p-21-0039-0041_determination_non-cbi_final.pdf .
P-21-0103	Urea, N-[3-[(4-methylphenyl)sulfonyl]oxy]phenyl]-N'-phenyl-include; CASRN 2102522-55-2.	https://www.epa.gov/system/files/documents/2021-07/p-21-0103_determination_non-cbi_final.pdf .

Authority: 15 U.S.C. 2601 *et seq.*

Dated: August 10, 2021.

Madison Le,

Director, New Chemical Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2021-17661 Filed 8-17-21; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-SFUND-2005-0008; FRL-8827-01-OLEM]

Proposed Information Collection Request; Comment Request: Emergency Planning and Release Notification Requirements (EPCRA Sections 302, 303, and 304), EPA ICR Number 1395.11, OMB Control Number 2050-0092**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), "Emergency Planning and Release Notification Requirements," (EPA ICR No. 1395.11, OMB Control No. 2050-0092) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described in

SUPPLEMENTARY INFORMATION. This is a proposed extension of the ICR, which is currently approved through April 30, 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.

DATES: Comments must be submitted on or before October 18, 2021.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA-HQ-SFUND-2005-0008, to (1) EPA online using www.regulations.gov (our preferred method), by email to superfund.docket@epa.gov or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to oir_submission@omb.eop.gov. Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Wendy Hoffman, Office of Emergency Management, Mail Code 5104A, Environmental Protection Agency, 1200

Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564-8794; email address: hoffman.wendy@epa.gov.

SUPPLEMENTARY INFORMATION:

Supporting documents which explain in detail the information that EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at <http://www.regulations.gov>. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room is closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. For further information about the EPA's public docket, Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>. The telephone number for the Docket Center is 202-566-1744.

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The authority for the emergency planning and emergency release notification requirements is sections 302, 303, and 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 (42 U.S.C. 11002, 11003, and 11004). EPCRA established broad emergency planning and facility reporting requirements. Section 302 requires

facilities to notify their State Emergency Response Commission (SERC) or Tribal Emergency Response Commission (TERC), Local Emergency Planning Committee (LEPC) or Tribal Emergency Planning Committee (TEPC) with jurisdiction over their facility, of the presence of a threshold planning quantity of a listed extremely hazardous substance (EHS) at the facility. This activity was completed by existing facilities soon after the law was passed. Only new facilities that may become subject to these requirements must notify the SERC (or TERC) and the LEPC (or TEPC). Currently covered facilities are required to notify the LEPC (or TEPC) of any changes that occur at the facility which would be relevant to emergency planning. Section 303 requires the LEPC (or TEPC) to prepare local emergency response plans for their planning district using the information provided by facilities under Section 302. An LEPC (or TEPC) may request any information from facilities necessary to develop emergency response plans. Initial emergency response plans were developed within a few months after the law was passed. LEPCs (or TEPCs) are required to review and update the plan at least annually or more frequently as changes occur in the community. Section 304 requires facilities to report to SERCs (or TERCs) and LEPCs (or TEPCs) releases in excess of the reportable quantities listed for each EHS. This ICR also covers the notification and the written follow-up required under Section 304. The implementing regulations are codified in 40 CFR part 355.

Form Numbers: None.

Respondents/affected entities: Entities potentially affected by this action are those which have a threshold planning quantity of an EHS listed in 40 CFR part 355, Appendix A and those which have a release of any of the EHSs above a reportable quantity. Entities more likely to be affected by this action may include chemical manufacturers, retailers, petroleum refineries, utilities, etc.

Respondent's obligation to respond: Mandatory (Sections 302, 303 and 304 of EPCRA).

Estimated number of respondents: 108,556. This figure includes 3,556 LEPCs (or TEPCs) and SERCs (or TERCs) and will be updated, as needed, during the 60-day OMB review period.

Frequency of response: EPCRA section 302 reporting is a one-time

notification unless there are changes to the reported information; EPCRA section 304 notification happens only when a release occurs from a facility.

Total estimated burden: 222,856 hours (per year) (includes LEPCs (or TEPCs) and SERCs (or TERCs)). This figure will be updated to account for any changes in O&M costs, burden and number of respondents during the 60-day OMB review period. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: \$11.67 million (per year), including \$8,470 annual operations and maintenance (O&M) costs. This figure will be updated to account for any changes in O&M costs, burden and number of respondents during the 60-day OMB review period. There are no capital costs associated with this ICR.

Changes in estimates: The number of facilities subject to section 302 is 95,000, which is the same as in the previous ICR. The reduction in burden of approximately 25 percent (36,600 hours annually) for activities related to section 304 reporting requirements for facilities is attributable to a decrease in the number of release notifications reported to the National Response Center for the previous three years, which EPA assumes will apply to the three years of this ICR renewal. In addition, EPA corrected a few minor calculation errors. Changes in estimated costs are attributable to updated wage rates and a reduction in estimated O&M costs. Any additional change in burden or cost resulting from the 60-day OMB review period will be described and explained in this section when the updated ICR Supporting Statement is completed.

Donna Salyer,

Director, Office of Emergency Management.

[FR Doc. 2021-17740 Filed 8-17-21; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8719-01-OMS]

Privacy Act of 1974; System of Records

AGENCY: Office of Mission Support (OMS), Environmental Protection Agency (EPA).

ACTION: Notice of a modified system of records.

SUMMARY: The U.S. Environmental Protection Agency's (EPA), Office of Information Management (OIM) is giving notice that it proposes to modify a system of records pursuant to the

provisions of the Privacy Act of 1974. Central Data Exchange-Customer Registration Subsystem (CDX-CRS) is being modified to officially change from Central Data Exchange Customer Registration Subsystem (CDX-CRS). The new name for the system will be called Central Data Exchange (CDX). Additionally, CDX will leverage cloud resources.

DATES: Persons wishing to comment on this system of records notice must do so by September 17, 2021. Modified routine uses for this modified system of records will be effective September 17, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OMS-2020-0139, by one of the following methods:

Federal eRulemaking Portal: www.regulations.gov. Follow the online instructions for submitting comments.

Email: docket_oms@epa.gov. Include the Docket ID number in the subject line of the message.

Fax: 202-566-1752.

Mail: OMS Docket, Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

Hand Delivery: OMS Docket, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OMS-2020-0139. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <https://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Controlled Unclassified Information (CUI) or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CUI or otherwise protected through <https://www.regulations.gov>. The <https://www.regulations.gov> website is an "anonymous access" system for the EPA, which means the EPA will not know your identity or contact information. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. If you send an email

comment directly to the EPA without going through <https://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA public docket, visit the EPA Docket Center homepage at <https://www.epa.gov/dockets>.

Docket: All documents in the docket are listed in the <https://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CUI or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <https://www.regulations.gov> or in hard copy at the OMS Docket, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460. The Public Reading Room is normally open from 8:30 a.m. to 4:30 p.m., Monday through Friday excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OMS Docket is (202) 566-1752.

Temporary Hours During COVID-19

Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov> or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: U.S. EPA, Attn: Joe Carioti, U.S. EPA, Information Exchange Services Branch, 1200 Pennsylvania Ave. NW (Mail Code 2824T), Washington, DC 20460, Tel: 202-564-6413, Email: carioti.joe@epa.gov.

SUPPLEMENTARY INFORMATION: The information contained in records maintained in the CDX system are used to verify the identity of the individual,

inform users of the conditions and terms of using CDX, allow individual users to establish an account on CDX, provide individual users access to their CDX account for electronically filing compliance data or exchanging other forms of environmental data, allow individual users to customize, update or terminate their account with CDX, renew or revoke an individual user's account on CDX, support the CDX help desk functions, investigate possible fraud and verify compliance with program regulations, and initiate legal action against an individual involved in program fraud, abuse, or noncompliance. CDX records will be used to facilitate registering CDX system users, issuing a username and password, and subsequently, verifying an individual's identity as he/she seeks to gain routine access to his/her account. In some cases, the user verification process will require EPA to contact the employer, based on the registration information provided by the user. The system has secondary uses that include using the established username to facilitate tracking service calls or emails from the user in the event that there is a change in registration status or the user has a problem with CDX; offering the user new CDX service options, and facilitating the retrieval of user actions (e.g., historical submissions and help tickets); and events while on the CDX system.

The records may also be subsequently used for auditing or other internal purposes of the EPA, including but not limited to instances where enforcement of the conditions of using CDX are necessary; investigation of possible fraud involving a registered user; litigation purposes related to information reported to the agency; contacting the individual in the event of a system modification; a change to CDX; or modification, revocation or termination of user's access privileges to CDX.

SYSTEM NAME AND NUMBER:

Central Data Exchange (CDX), EPA-52.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The CDX system is located at U.S. EPA National Computer Center, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711; additional locations include cloud environments located in Microsoft Azure East US 1, East US 2 and Central US along with other partner sites in Virginia.

SYSTEM MANAGER(S):

Joe Carioti, Branch Chief, U.S. EPA, Information Exchange Services Branch, 1200 Pennsylvania Ave. NW (Mail Code 2824T), Washington, DC 20460. Tel: 202-564-6413, Email: carioti.joe@epa.gov.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

In accordance with the Government Paperwork Elimination Act (44 U.S.C. 3504), EPA's electronic compliance filing and environmental data exchange system will enable the "acquisition and use of information technology, including alternative information technologies that provide for electronic submission, maintenance, or disclosure of information as a substitute for paper and for the use and acceptance of electronic signatures." Section 3504(a)(1)(B)(vi) of Title 44, United States Code. Authority is additionally regulated by the CROss-Media Electronic Reporting Rule (40 CFR part 3), as a regulatory alternative to paper reporting.

PURPOSE(S) OF THE SYSTEM:

CDX is EPA's portal for electronically exchanging environmental data with external customers. Users with CDX accounts may choose to engage in secure, electronic filing of environmental documents as permitted under the Government Paperwork Elimination Act (GPEA). The information is also used to provide authenticated, protected access to the CDX system, thereby protecting CDX and CDX users from potential harm caused by individuals with malicious intentions gaining unauthorized access to the system.

CATEGORIES OF INDIVIDUALS COVERED BY SYSTEM:

This system contains records on all individuals that have either attempted to register or have registered to obtain an account to use CDX for electronically exchanging data with EPA. Registered users of CDX may include representatives of industry, government or laboratories exchanging information with EPA through CDX.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records for individuals' name, self-assigned username and security question, work title, work address and related work contact information (e.g., phone numbers, email address), supervisors' name and related contact information, information related to the EPA reporting program the individual is planning to electronically file or report under (e.g., EPA program ID # and EPA program

role), and the method of reporting (e.g., web browser, file exchange). In cases where individuals are asked to electronically "sign" certain EPA forms, CDX may request additional information items from an individual in order to safeguard their account and create secret questions/answers that only the individual should know.

RECORD SOURCE CATEGORIES:

Information is obtained from individuals who have had or seek to have their identity authenticated.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The routine uses below are both related to and compatible with the original purpose for which the information was collected. The following general routine uses apply to this system (73 FR 2245):

A. Disclosure for Law Enforcement Purposes: Information may be disclosed to the appropriate Federal, State, local, tribal, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information is relevant to a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the receiving entity.

B. Disclosure Incident to Requesting Information: Information may be disclosed to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose of the request, and to identify the type of information requested,) when necessary to obtain information relevant to an agency decision concerning retention of an employee or other personnel action (other than hiring,) retention of a security clearance, the letting of a contract, or the issuance or retention of a grant, or other benefit.

C. Disclosure to Requesting Agency: Disclosure may be made to a Federal, State, local, foreign, or tribal or other public authority of the fact that this system of records contains information relevant to the retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The other agency or licensing organization may then make a request supported by the written consent of the individual for the entire record if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another Federal agency for criminal, civil,

administrative, personnel, or regulatory action.

D. Disclosure to Office of Management and Budget: Information may be disclosed to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

E. Disclosure to Congressional Offices: Information may be disclosed to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

F. Disclosure to Department of Justice: Information may be disclosed to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the Agency is authorized to appear, when:

1. The Agency, or any component thereof;
2. Any employee of the Agency in his or her official capacity;
3. Any employee of the Agency in his or her individual capacity where the Department of Justice or the Agency have agreed to represent the employee; or
4. The United States, if the Agency determines that litigation is likely to affect the Agency or any of its components,

Is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Agency is deemed by the Agency to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

G. Disclosure to the National Archives: Information may be disclosed to the National Archives and Records Administration in records management inspections.

H. Disclosure to Contractors, Grantees, and Others: Information may be disclosed to contractors, grantees, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, job, or other activity for the Agency and who have a need to have access to the information in the performance of their duties or activities for the Agency. When appropriate, recipients will be required to comply with the requirements of the Privacy Act of 1974 as provided in 5 U.S.C. 552a(m).

I. Disclosures for Administrative Claims, Complaints and Appeals: Information from this system of records may be disclosed to an authorized

appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other person properly engaged in investigation or settlement of an administrative grievance, complaint, claim, or appeal filed by an employee, but only to the extent that the information is relevant and necessary to the proceeding. Agencies that may obtain information under this routine use include, but are not limited to, the Office of Personnel Management, Office of Special Counsel, Merit Systems Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and Office of Government Ethics.

J. Disclosure to the Office of Personnel Management: Information from this system of records may be disclosed to the Office of Personnel Management pursuant to that agency's responsibility for evaluation and oversight of Federal personnel management.

K. Disclosure in Connection With Litigation: Information from this system of records may be disclosed in connection with litigation or settlement discussions regarding claims by or against the Agency, including public filing with a court, to the extent that disclosure of the information is relevant and necessary to the litigation or discussions and except where court orders are otherwise required under section (b)(11) of the Privacy Act of 1974, 5 U.S.C. 552a(b)(11).

The two routine uses below (L and M) are required by OMB Memorandum M-17-12.

L. Disclosure to Persons or Entities in Response to an Actual or Suspected Breach of Personally Identifiable Information: To appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that there has been a breach of the system of records, (2) the Agency has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Agency (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Agency's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

M. Disclosure To Assist Another Agency in Its Efforts To Respond to a Breach of Personally Identifiable Information: To another Federal agency or Federal entity, when the Agency determines that information from this system of records is reasonably necessary to assist the recipient agency

or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

These records are maintained electronically on computer storage devices such as computer disks. The computer storage devices are located at U.S. EPA National Computer Center, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711, on cloud resources and partner sites. Backups will be maintained at a disaster recovery site.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrievable by the CDX username, program ID number, all or part of the individual's name, phone number, and email address.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The EPA will retain and dispose of these records in accordance with National Archives and Records Administration General Records Schedule 20, Item 1.c. This 0097 schedule provides disposal authorization for electronic files and hard copy printouts created to monitor system usage, including but not limited to log-in files, audit trail files, system usage files, and cost-back files used to access charges for system use. Records will be deleted or destroyed according to EPA Records Schedule 0097.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Security controls used to protect personal sensitive data in Central Data Exchange (CDX) are commensurate with those required for an information system rated moderate for confidentiality, integrity, and availability, as prescribed in NIST Special Publication, 800-53, "Security and Privacy Controls for Information Systems and Organizations," Revision 4.

1. Administrative Safeguards: The system will be operated and maintained by EPA or organizations under contract with the EPA (henceforth referred to as "EPA"). EPA has minimized the risk of unauthorized access to the system by establishing a secure environment for exchanging electronic information.

3. Physical Safeguards: Physical access to the data system housed within the facility is controlled by a

computerized badge reading system, and the entire complex is patrolled by security during non-business hours. The computer system offers a high degree of resistance to tampering and circumvention. Multiple levels of security are maintained with the computer system control program.

4. *Logical Access Safeguards (Technical)*: The individual registering for CDX will generate a self-assigned passwords that will be stored in CDX, but it will only be accessible to the registering individual. To restore passwords additional secrets will be provided by individual and validated along with email or other out-of-band factor such as registered mobile phone using a 1-time passphrase.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information in this system of records about themselves are required to provide adequate identification (*e.g.*, driver's license, military identification card, employee badge or identification card). Additional identity verification procedures may be required, as warranted. Requests must meet the requirements of EPA regulations that implement the Privacy Act of 1974, at 40 CFR part 16.

CONTESTING RECORDS PROCEDURES:

Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete EPA Privacy Act procedures are described in EPA's Privacy Act regulations at 40 CFR part 16.

NOTIFICATION PROCEDURE:

Any individual who wants to know whether this system of records contains a record about him or her, should make a written request to the Attn: Agency Privacy Officer, MC 2831T, 1200 Pennsylvania Ave., NW, Washington, DC 20460, privacy@epa.gov.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Notice of a New System of Records [**Federal Register** Vol 67, No. 52 (Monday, March 18, 2002)] Amendment to System of Records Notice [**Federal Register** Vol 68, No. 235 (Monday, December 8, 2003)].

Vaughn Noga,

Senior Agency Official for Privacy.

[FR Doc. 2021-17639 Filed 8-17-21; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2021-0424; FRL-8721-01-OCSPJP]

Electronic Option for Submitting Foreign Purchaser Acknowledgement Statement of Unregistered Pesticides Under the Federal Insecticide, Fungicide and Rodenticide Act; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the availability of an electronic option for submitting the Foreign Purchaser Acknowledgement Statement (FPAS) for unregistered pesticides as required under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). As an alternative to the hardcopy approach, which is still available, EPA is also now accepting the required notifications electronically using EPA's electronic document submission system, the Central Data Exchange (CDX). Use of CDX to prepare and submit the required notifications to EPA will help streamline and reduce the administrative costs and burdens associated with submitting paper-based statements for both the submitters and the Agency.

DATES: An FPAS may be submitted electronically using CDX as of August 18, 2021.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2021-0424, is available online at <http://www.regulations.gov> or in-person at the Office of Pesticide Program Docket (OPP Docket), Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744.

Please note that due to the public health concerns related to COVID-19, the EPA/DC and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on the EPA/DC and docket access, visit <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: For technical information contact: Zoe Emdur, Office of Program Support, Environmental Protection Agency, 1200

Pennsylvania Ave. NW, Washington, DC 20460-0001; Telephone number: (703) 347 0529; email address: emdur.zoe@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, import, or distribute in commerce chemical substances and mixtures. The following North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. Potentially affected entities may include, but are not limited to the following:

- Basic Chemical Manufacturing (NAICS 3251);
- Resin, Synthetic Rubber, and Artificial and Synthetic Fibers and Filaments Manufacturing (NAICS 3252);
- Pesticide, Fertilizer, and Other Agricultural Chemical Manufacturing (NAICS 3253); and
- Other Chemical Product and Preparation Manufacturing (NAICS 3251).

If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What action is the Agency taking?

The Agency is announcing the availability of an electronic option for use by those who must submit an FPAS under FIFRA 17(a)(2). EPA is providing an electronic option as part of the broader Federal government efforts to move to modern, electronic methods of information collection, which streamline processes and reduce overall burdens for all involved.

Currently, an FPAS can only be submitted to the Agency in hardcopy using regular mail, requiring the Agency to manually scan and process submissions. The modernization of the FPAS process will allow the option for users to prepare and submit their notifications to the Agency electronically using a web-based application. To file electronically, submitters must use the EPA provided application. To access the application, users must complete a one-time registration with EPA's CDX (<https://cdx.epa.gov/>). CDX is the Agency's portal for submitting information to EPA in a secure online manner. Electronic submissions of an FPAS will be done via the Pesticide Submission Portal ("PSP" or "Pesticide Portal") which is

accessed through EPA's CDX. Registered CDX users will be able to select "FPAS Submission" for a dropdown menu and upload one or more attachments for their submission. When registering, a user will need to ensure they are registering for the PSP data flow which will provide them access to the FPAS reporting application. (Note: Users who have previously registered with CDX are able to add "PSP" to their current registration.) This reporting tool is compatible with Windows, Mac, Linux, and UNIX based computers, and uses "Extensible Markup Language" (XML) specifications for efficient data transmission across the internet.

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

FIFRA section 17(a)(2) and 40 CFR 168.75 require that any person exporting unregistered pesticides must obtain and submit to EPA a statement, known as an FPAS, signed by the foreign purchaser prior to export, acknowledging that the purchaser understands that the pesticide is not registered for use in and cannot be sold in the United States. EPA transmits the FPAS notification to the government of the importing country via per-shipment notifications or annual summary reports.

The exporter is required to send a copy of the purchaser acknowledgment statement to EPA within 7 days of having shipped the pesticide, along with a signed statement that the shipment did not occur prior to receipt of the purchaser acknowledgment statement. In addition, if the exporter chooses the annual reporting option, he or she must include a statement that the FPAS is for the first shipment of a pesticide to a particular purchaser in a specific country, and that the exporter will report this information annually. Where an exporter chooses to comply with the annual summary reporting option, a summary must be sent after the end of the calendar year which lists all shipments of a particular pesticide shipped to a particular foreign purchaser. It is not required for the statement to be submitted to EPA in time to enable EPA to notify the importing country prior to arrival of the pesticide.

When exporting pesticides that are not registered in the U.S., manufacturers must submit a FPAS to EPA either per shipment or on an annual basis. EPA will then use this information to notify the Designated National Authority of the importing country. The FPAS must include the following items:

The name, address, and EPA identification number (*i.e.*, EPA

company number or establishment number), if applicable, of the exporter.

- The name and address of the foreign purchaser.
- The identity of the product and the active ingredient(s), including:
 - The Chemical Abstract Services Registry (CAS) number for each active ingredient;
 - The chemical nomenclature for each active ingredient as used by the International Union of Pure and Applied Chemists (IUPAC); and
 - Other chemical or common names that could help EPA better identify the product (*i.e.*, EPA's chemical PC code).
- If known or reasonably ascertainable, the country or countries of the final destination of the export shipment (*i.e.*, where the exported pesticide is intended to be used), if different from the country of the foreign purchaser's address.
- Signed and dated statement from the foreign purchaser acknowledging that the product is not registered for use in the United States and cannot be sold in the United States.
- The exporter must submit a signed certification affirming that the export did not occur until the statement signed by the foreign purchaser was obtained by the exporter.
- Any foreign purchaser signing a statement in their own language must have the appropriate English translation accompanying it when submitted to the EPA.

For electronic reporting, the Government Paperwork Elimination Act (GPEA) (44 U.S.C. 3504) requires Executive agencies to provide, when practicable, for the option of the electronic maintenance, submission, or disclosure of information as a substitute for paper; and the use and acceptance of electronic signatures.

D. What are the anticipated benefits of CDX reporting and use of PSP?

EPA encourages submitters of an FPAS to adopt the electronic option as the preferred submission method. Use of the electronic option reduces the paperwork burden for submitters by reducing the cost and time required to review, edit, and transmit data to the Agency in a hardcopy format, as well as the cost to mail that hardcopy to EPA and to retain required records related to that hardcopy submission. PSP, the web-based reporting tool, enables efficient data transmittal and reduces errors with built-in validation procedures. PSP also allows submitters to share a draft submission within their organization, and more easily save an electronic copy of that submission for the required records or future use. The

resource and time requirements for EPA to review and process these export notifications will also be reduced, including increased efficiencies in communicating with submitters, as well as the storage and retrieval of submissions.

II. Electronic Reporting Procedures

This unit provides an overview of CDX, PSP, and the FPAS web-based reporting tool. It also provides instructions for the electronic process for FPAS notifications. As a reminder, the requirements are set in the regulations implementing the statutory mandate in FIFRA that appear in 40 CFR 168.75.

A. What is CDX?

CDX is EPA's point of entry for environmental data submissions to the Agency. CDX also provides the capability for submitters to access their data using web services. CDX enables EPA to work with stakeholders, including governments, regulated industries, and the public to enable streamlined, electronic submission of data via the internet. To report under the procedures discussed in this notice, submitters would register with CDX, select the PSP option, and access reporting of FPAS. More information about CDX is available online at: <http://www.epa.gov/cdx/>.

B. What is PSP?

PSP is a web-based reporting tool for the submission of forms, reports, and other documents including FPAS notifications, electronically to the Agency. The tool is available for use with Windows, Mac, Linux, and UNIX computer systems, using "Extensible Markup Language" (XML) specifications for efficient data transmission across the internet. CISS provides user-friendly navigation, works with CDX to secure online communication, creates a completed Portable Document Format (PDF) for review prior to submission, and enables data, reports, and other information to be submitted easily as PDF attachments, or by other electronic standards, such as XML. As currently implemented, one or more representatives from each facility must establish an account with EPA's CDX to prepare, transmit, certify, and submit forms, reports, and other documents.

C. How will the FPAS be submitted via the internet using CDX?

Once registered with EPA's CDX, submitters of FPAS notifications will select the PSP Program and use "FPAS submission" to prepare a data file for submission.

1. *Registering with CDX.* To submit electronically to EPA via CDX, a user would register with CDX at: http://cdx.epa.gov/epa_home.asp. CDX registration enables EPA to authenticate user identities and verify user authorizations.

To register in CDX, the CDX registrant (also referred to as “Electronic Signature Holder” or “Public/Private Key Holder”) would agree to the Terms and Conditions, provide information about the user and organization, select a username and password, and follow the procedures outlined in the guidance document for CDX available online at: http://www.epa.gov/cdr/tools/CDX_Registration_Guide_v0_02.pdf.

2. *Submission.* Those choosing to submit electronically will use PSP to prepare their submissions. Then the submitter will choose “FPAS submission” from the drop-down which guides users through a “hands-on” process of creating an electronic submission. Once a user completes the relevant data fields and attaches appropriate PDF files or other file types, such as XML files, the web-based tool validates the submission by performing a basic error check and makes sure all the required fields and attachments are provided and complete.

Further instructions on submitting information and instructions for uploading PDF attachments or other file types, such as XML will be available through FPAS reporting guidance available online at: <https://www.epa.gov/pesticide-registration/electronic-submissions-pesticide-applications>.

D. Can CBI be submitted using PSP?

Yes. PSP enables the user to submit CBI and substantiate that CBI claim in an electronic format. All information sent by the user via CDX is transmitted securely to protect CBI. PSP also guides the user through the process of submitting CBI by prompting the user to check a CBI checkbox if using a form or by submitting a scanned document containing CBI by bracketing, underlining, or otherwise marking the confidential information on the document prior to scanning. As with paper-based submissions, a sanitized copy of any document containing CBI would be included by the user in the electronic submission. The FPAS reporting guidance instructs users on how to submit CBI and substantiate CBI claims information using PSP.

E. How will CBI be protected when submitting via CDX?

The Agency ensures secure transmission of the data, reports, and

other documents sent from the user through the internet via the Transport Layer Security (TLS) 1.0 protocol. TLS 1.0 is a widely used approach for securing internet transactions and is endorsed by the National Institute of Standards and Technology (NIST) as a means for protecting data sent over the internet. See NIST Special Publication 800–52, “*Guidelines for the Selection and Use of Transport Layer Security (TLS) Implementations*,” available online at: <http://csrc.nist.gov/publications/nistpubs/800-52/SP800-52.pdf>.

In addition, PSP enables the submitter to electronically sign, encrypt, and transmit submissions, which the Agency subsequently provides back to the user as an unaltered copy of record. This assures the user that the Agency has received exactly what the user sent to the Agency. PSP encrypts using a module based on the 256-bit Advanced Encryption Standard (AES) adopted by NIST. Details about AES can be found on the NIST website at: <http://csrc.nist.gov/publications/fips/fips197/fips-197.pdf>. EPA may incorporate other encryption modules into future versions of PSP. Information submitted via CDX is processed within EPA by secure systems certified for compliance with Federal Information Processing Standards (FIPS) that are available online at: <http://www.nist.gov/itl/fips.cfm>.

III. Paperwork Reduction Act (PRA)

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

The information collection requirements associated with the electronic option for FPAS notifications under FIFRA section 17(a)(2) and 40 CFR 168.75 were approved by OMB pursuant to the PRA under OMB Control No. 2070–0027 (EPA ICR No. 0161.15) on August 6, 2021. The addition of an electronic option for submissions does not change the requirements or add new burden requiring additional OMB approval. The annual paperwork burden per FPAS notification is estimated to average 2,940 hours for hardcopy submissions and 1,803 hours for electronic

submissions. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required export notification to EPA. For additional details, please see the Information Collection Request document that is available in the docket.

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

Authority: 7 U.S.C. 136 *et seq.*

Dated: August 12, 2021.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2021–17660 Filed 8–17–21; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice: 2021–6023]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Bank of the United States (EXIM), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995. The Application for Exporter Short Term Single Buyer Insurance form will be used by entities involved in the export of U.S. goods and services, to provide EXIM with the information necessary to obtain legislatively required assurance of repayment and fulfills other statutory requirements. Export-Import Bank customers will be able to submit this form on paper or electronically.

DATES: Comments must be received on or before October 18, 2021 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on

WWW.REGULATIONS.GOV (EIB 10–02) or by email tara.pender@exim.gov, or by mail to Tara Pender, Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC. The application tool can be reviewed at: <https://www.exim.gov/pub/pending/EIB92-64.pdf>.

FOR FURTHER INFORMATION CONTACT: To request additional information, please Tara Pender, 202–565–3655.

SUPPLEMENTARY INFORMATION:

Title and Form Number: EIB 92–64 Application for Exporter Short Term Single Buyer Insurance.

OMB Number: 3048–0018.

Type of Review: Renewal.

Need and Use: The information requested enables the applicant to provide EXIM with the information necessary to obtain legislatively required assurance of repayment and fulfills other statutory requirements.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 310.

Estimated Time per Respondent: 1.5 hours.

Annual Burden Hours: 465 hours.

Frequency of Reporting of Use: As needed.

Government Costs:

Reviewing Time per Year: 465 hours.

Average Wages per Hour: \$42.50.

Average Cost per Year: \$19,762.5 (time*wages).

Benefits and Overhead: 20%.

Total Government Cost: \$23,715.

Bassam Doughman,

IT Specialist.

[FR Doc. 2021–17652 Filed 8–17–21; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice: 2021–6024]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Banks of the United States (EXIM), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995. This collection of information is necessary to determine eligibility of the underlying export transaction for EXIM insurance coverage.

DATES: Comments must be received on or before October 18, 2021 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* (EIB 10–02) or by email tara.pender@exim.gov, or by mail to Tara Pender, Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC. The application tool can be reviewed at: <https://www.exim.gov/sites/default/files/forms/eib92-41.pdf>.

FOR FURTHER INFORMATION CONTACT: To request additional information, please Tara Pender, 202–565–3655.

SUPPLEMENTARY INFORMATION:

Title and Form Number: EIB 92–41 Application for Financial Institution Short-Term, Single-Buyer Insurance.

OMB Number: 3048–0019.

Type of Review: Renewal.

Need and Use: The Application for Financial Institution Short-term Single-Buyer Insurance form will be used by financial institution applicants to provide EXIM with the information necessary to determine if the subject transaction is eligible for EXIM insurance coverage.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 215.

Estimated Time per Respondent: 1.6 hours.

Annual Burden Hours: 344.

Frequency of Reporting of Use: Annual.

Government Expenses:

Reviewing Time per Year: 1,290 hours.

Average Wages per Hour: \$42.50.

Average Cost per Year: \$54,825 (time*wages).

Benefits and Overhead: 20%.

Total Government Cost: \$70,176.

Bassam Doughman,

IT Specialist.

[FR Doc. 2021–17653 Filed 8–17–21; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice: 2021–6025]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Bank of the United States (EXIM Bank), as part

of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995. FORM TITLE: EIB 84–01 Application for Export Working Capital Guarantee.

DATES: Comments must be received on or before October 18, 2021 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* (EIB 10–02) or by email tara.pender@exim.gov, or by mail to Tara Pender, Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC. The application tool can be reviewed at: <https://www.exim.gov/sites/default/files/forms/eib84-01.pdf>.

FOR FURTHER INFORMATION CONTACT: To request additional information, please Tara Pender, 202–565–3655.

SUPPLEMENTARY INFORMATION:

Title and Form Number: EIB 84–01 Application for Export Working Capital Guarantee.

OMB Number: 3048–0013.

Type of Review: Renewal.

Need and Use: This form provides EXIM Bank staff with the information necessary to determine if the application and transaction is eligible for EXIM Bank assistance under their export working capital guarantee program.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

EXIM Bank

Annual Number of Respondents: 200.

Estimated Time per Respondent: 2 hours.

Annual Burden Hours: 400 hours.

Frequency of Reporting of Use: Annually.

Government Expenses:

EXIM Bank

Reviewing Time per Year: 300 hours.

Average Wages per Hour: \$42.50.

Average Cost per Year: \$12,750.00 (time*wages).

Benefits and Overhead: 20%.

Total Government Cost: \$15,300.00.

Bassam Doughman,

IT Project Manager, Office of the Chief Information Officer.

[FR Doc. 2021–17655 Filed 8–17–21; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR No: 42162]

Privacy Act of 1974; System of Records

AGENCY: Federal Communications Commission, Office of Managing Director.

ACTION: Rescindment of a system of records notice.

SUMMARY: The information in this system served to identify the individual(s) to contact in case of a medical or other emergency involving the Commission employee occur while the employee is on the job.

DATES: The rescindment will become effective [30 days after publication].

ADDRESSES: Comments can be submitted to Privacy@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For further information please contact Privacy@fcc.gov.

SUPPLEMENTARY INFORMATION: The Privacy Act provides that an agency may only collect or maintain in its records information about individuals that is relevant and necessary to accomplish a purpose that is required by a statute or executive order. The FCC has determined that this system no longer meets this standard, because a new system—FCC/PSHSB-1—was developed to maintain this information. Therefore, the FCC proposes to rescind FCC/OMD-15 and expunge or transfer the records it contains to FCC/PSHSB-1 in accordance with the requirements in the SORN and the applicable records retention or disposition schedule approved by the National Archives and Records Administration.

SYSTEM NAME AND NUMBER:

FCC/OMD-15, Employee Locator System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

SYSTEM MANAGER:

Assistant Managing Director—Human Resources Management (AMD-HRM), Office of the Managing Director (OMD), Federal Communications Commission.

HISTORY:

71 FR 17258 (April 5, 2006).

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2021-17657 Filed 8-17-21; 8:45 am]

BILLING CODE P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 41733]

Privacy Act of 1974; System of Records

AGENCY: Federal Communications Commission.

ACTION: Notice of a new system of records.

SUMMARY: The Federal Communications Commission (FCC, Commission, or Agency) proposes to add a new system of records, FCC-1, Outreach, subject to the Privacy Act of 1974, as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the Agency. The Commission uses the information on individuals and businesses contained in the records in this system to conduct outreach.

DATES: This system of records will become effective on August 18, 2021. Written comments on the routine uses are due by September 17, 2021. The routine uses will become effective on September 17, 2021, unless written comments are received that require a contrary determination.

ADDRESSES: Send comments to Margaret Drake, at privacy@fcc.gov, or at Federal Communications Commission (FCC), 45 L Street NE, Washington, DC 20554 at (202) 418-1707.

FOR FURTHER INFORMATION CONTACT: Margaret Drake, (202) 418-1707, or privacy@fcc.gov (and to obtain a copy of the Narrative Statement and the Supplementary Document, which includes details of the modifications to this system of records).

SYSTEM NAME AND NUMBER:

FCC-1, Outreach.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Communications Commission (FCC), 45 L Street NE, Washington, DC 20554; Universal Service Administrative Company, 700 12th Street NW, Suite 900, Washington, DC 20005; or FISMA compliant contractor.

SYSTEM MANAGER(S):

Federal Communications Commission (FCC); Universal Service Administrative Company (USAC); or FISMA compliant contractor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

47 U.S.C. 151, 152, 155, 257, 303; and 5 U.S.C. 602(c) and 609(a)(3).

PURPOSES:

The FCC and organizations administering programs on behalf of the FCC use this system to conduct outreach to individuals and businesses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and businesses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contact information, such as name, phone numbers, emails, and addresses, as well as work and educational history.

RECORD SOURCE CATEGORIES:

Information in this system is provided by individuals or businesses who wish to be contacted by the FCC regarding issues in the communications industry, the mission of the FCC, FCC programs, or networking opportunities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside the FCC as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows.

1. Third Parties—To third parties, including individuals and businesses in the communications industry, FCC vendors and their contractors, and other federal agencies to facilitate outreach and networking opportunities.

2. Adjudication and Litigation—To disclose to the Department of Justice (DOJ), or to other administrative or adjudicative bodies before which the FCC is authorized to appear, when: (a) The FCC or any component thereof; or (b) any employee of the FCC in his or her official capacity; or (c) any employee of the FCC in his or her individual capacity where the DOJ or the FCC have agreed to represent the employee; or (d) the United States is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ or the FCC is deemed by the FCC to be relevant and necessary to the litigation.

3. Law Enforcement and Investigation—To disclose pertinent

information to the appropriate Federal, State, local, or tribal agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the FCC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

4. Congressional Inquiries—To provide information to a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the written request of that individual.

5. Government-wide Program Management and Oversight—To provide information to the Department of Justice (DOJ) to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act; or to the Office of Management and Budget (OMB) to obtain that office's advice regarding obligations under the Privacy Act.

6. Breach Notification—To appropriate agencies, entities, and persons when: (a) the Commission suspects or has confirmed that there has been a breach of PII maintained in the system of records; (b) the Commission has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Commission (including its information system, programs, and operations), the Federal Government, or national security; and; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

7. Assistance to Federal Agencies and Entities—To another Federal agency or Federal entity, when the Commission determines that information from this system is reasonably necessary to assist the recipient agency or entity in: (a) Responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, program, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

8. Non-Federal Personnel—To disclose information to non-federal personnel, including contractors, who have been engaged to assist the FCC in the performance of a contract service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform their activity.

In each of these cases, the FCC will determine whether disclosure of the records is compatible with the purpose for which the records were collected.

REPORTING TO A CONSUMER REPORTING AGENCIES:

In addition to the routine uses cited above, the Commission may share information from this system of records with a consumer reporting agency regarding an individual who has not paid a valid and overdue debt owed to the Commission, following the procedures set out in the Debt Collection Act, 31 U.S.C. 3711(e).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

This an electronic system of records that resides on the FCC's network, USAC's network, or on an FCC vendor's network.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system of records can be retrieved by any category field, e.g., first name or zip code.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL:

The information in this system is maintained and disposed of in accordance with the National Archives and Records Administration (NARA) General Records Schedule 6.5, Item 020 (DAA-GRS-2017-0002-0002).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The electronic records, files, and data are stored within FCC, USAC, or a vendor's accreditation boundaries and maintained in a database housed in the FCC's, USAC's, or vendor's computer network databases. Access to the electronic files is restricted to authorized employees and contractors; and to IT staff, contractors, and vendors who maintain the IT networks and services. Other employees and contractors may be granted access on a need-to-know basis. The electronic files and records are protected by the FCC, USAC, and third-party privacy safeguards, a comprehensive and dynamic set of IT safety and security protocols and features that are designed to meet all Federal privacy standards, including those required by the Federal Information Security Modernization Act of 2014 (FISMA), the Office of Management and Budget (OMB), and the National Institute of Standards and Technology (NIST).

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to and/or amendment of records about

themselves should follow the Notification Procedure below.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request access to and/or amendment of records about themselves should follow the Notification Procedure below.

NOTIFICATION PROCEDURE:

Individuals wishing to determine whether this system of records contains information about themselves may do so by writing *Privacy@fcc.gov*. Individuals requesting access must also comply with the FCC's Privacy Act regulations regarding verification of identity to gain access to records as required under 47 CFR part 0, subpart E.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HISTORY:

This is a new system of records. Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2021-17651 Filed 8-17-21; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov*, or by mail, Federal Maritime Commission, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)-523-5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 201367.

Agreement Name: CMA CGM/Hapag Lloyd U.S. Gulf Coast to Jamaica Space Charter Agreement.

Parties: CMA CGM S.A. and Hapag-Lloyd AG.

Filing Party: Draughn Arbona; CMA CGM (America) LLC.

Synopsis: The Agreement authorizes CMA CGM to charter space to Hapag-Lloyd in the trade between the U.S. Gulf Coast and Jamaica.

Proposed Effective Date: 8/9/2021.

Location: <https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/49503>.

Agreement No.: 010955–010.

Agreement Name: ACL/H–L Reciprocal Space Charter and Sailing Agreement.

Parties: Atlantic Container Line A.B. and Hapag-Lloyd AG.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The amendment changes the name of the agreement, narrows its geographic scope, adds additional details regarding the cooperation of the parties, clarifies the authority of the parties with respect to joint negotiations, updates the address of ACL, shortens the notice required to terminate the agreement, makes other technical corrections, and deletes obsolete material. The amendment also restates the agreement.

Proposed Effective Date: 9/24/2021.

Location: <https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/1184>.

Agreement No.: 201368.

Agreement Name: ONE/CMA CGM Slot Exchange Agreement.

Parties: CMA CGM S.A. and Ocean Network Express Pte. Ltd.

Filing Party: Robert Magovern; Cozen O'Connor.

Synopsis: The Agreement authorizes CMA CGM and ONE to exchange space in the trade between Asia and the U.S. West Coast.

Proposed Effective Date: 9/26/2021.

Location: <https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/49505>.

Dated: August 13, 2021.

Rachel Dickon,

Secretary.

[FR Doc. 2021–17722 Filed 8–17–21; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Board, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) (collectively, the “agencies”) may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. On

May 7, 2021, the Board, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, requested public comment for 60 days on a proposal to revise and extend the Country Exposure Report for U.S. Branches and Agencies of Foreign Banks (FFIEC 019), which is currently an approved collection of information. The comment period for the proposal ended on July 6, 2021. As described in the **SUPPLEMENTARY INFORMATION** section, the agencies will revise the FFIEC 019 as proposed. In addition, the agencies will make clarifying revisions to the instructions in response to a comment received. The Board hereby gives notice of its plan to submit to OMB a request to approve the revision and extension of this information collection, and again invites comment on the proposal.

DATES: Comments must be submitted on or before September 17, 2021.

ADDRESSES: Interested parties are invited to submit written comments, identified by “FFIEC 019,” by any of the following methods:

- *Agency website:* <https://www.federalreserve.gov/>. Follow the instructions for submitting comments at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx>.
- *Email:* regs.comments@federalreserve.gov. Include the reporting form number in the subject line of the message.

- *Fax:* (202) 452–3819 or (202) 452–3102.

- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board’s website at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter’s request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the OMB

desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503; by fax to (202) 395–6974; or by email to oir_submission@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: For further information about the proposed extension with revision of the FFIEC 019 discussed in this notice, please contact the agency staff member whose name appears below. In addition, a copy of the FFIEC 019 form can be obtained at the FFIEC’s website (https://www.ffiec.gov/ffiec_report_forms.htm).

Nuha Elmaghrabi, Federal Reserve Board Clearance Officer, (202) 452–3884, Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. Telecommunications Device for the Deaf users may call (202) 263–4869.

SUPPLEMENTARY INFORMATION: The Board is proposing to extend for three years, with revision, the FFIEC 019.

Report Title: Country Exposure Report for U.S. Branches and Agencies of Foreign Banks.

Form Number: FFIEC 019.

OMB control number: 7100–0213.

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

Respondents: All branches and agencies of foreign banks domiciled in the United States with total direct claims on foreign residents in excess of \$30 million.

Estimated Number of Respondents: Ongoing: 147; one-time: 20.

Estimated Average Burden per Response: Ongoing: 10 hours; one-time: 4 hours.

Estimated Total Annual Burden: Ongoing: 5,880 hours; one-time: 320 hours.

I. General Description of Report

This information collection is required pursuant to sections 7 and 13 of the International Banking Act (12 U.S.C. 3105 and 3108) for the Board, sections 7 and 10 of the Federal Deposit Insurance Act (12 U.S.C. 1817 and 1820) for the FDIC, and the National Bank Act (12 U.S.C. 161) as applied through section 4 of the International Banking Act (12 U.S.C. 3102) for the OCC. The FFIEC 019 is given confidential treatment consistent with 5 U.S.C. 552(b)(4) and (b)(8).

The FFIEC 019 report must be filed by each U.S. branch or agency of a foreign bank that has total direct claims on foreign residents in excess of \$30

million. The branch or agency reports its total exposure (1) to residents of its home country, and (2) to the other five foreign nations to which its exposure is largest and is at least \$20 million. The home country exposure must be reported regardless of the size of the total claims for that nation.

Each respondent must report by country, as appropriate, the information on its direct claims (assets such as deposit balances with banks, loans, or securities), indirect claims (which include guarantees), and total adjusted claims on foreign residents, as well as information on commitments. The respondent also must report information on claims on related non-U.S. offices that are included in total adjusted claims on the home country, as well as a breakdown for the home country and each other reported country of adjusted claims on unrelated foreign residents by the sector of borrower or guarantor, and by maturity (in two categories: One year or less, and over one year). The Board collects and processes this report on behalf of all three agencies.

II. Current Actions

On May 7, 2021, the Board requested comment for 60 days on a proposal to extend for three years, with revision, the FFIEC 019. The agencies proposed to revise the FFIEC 019 by removing the five-country limit on the reporting of gross claims on foreign nations to which the U.S. branch or agency of a foreign bank has its largest total exposures of at least \$20 million.

The comment period for the proposal ended on July 6, 2021, and the agencies received one comment.

The commenter, a banking trade association, asked the agencies to clarify the definitions and treatment of certain terms in the FFIEC 019 to be consistent with the Country Exposure Report (FFIEC 009). The commenter stated that consistency between these terms in the FFIEC 019 and FFIEC 009 will reduce burden on firms that use FFIEC 009 definitions to report cross-jurisdictional data via the Systemic Risk Report (FR Y-15). Specifically, the commenter asked the agencies to clarify the FFIEC 019 instructions as follows: Add sections on accounting and differences from U.S. GAAP; add clarifying information to the Claims section regarding the definition of "claims"; add instructions related to Indirect Claims, including instructions related to required risk transfers (e.g., guarantees, insurance policies, and head offices), collateralized claims, debt and equity securities, netting and offsetting, reporting credit derivatives, and treatment of multi-name credit

derivatives; and add specific instructions for allocating claims to the rows. The agencies agree with the commenter's suggestions and will revise the FFIEC 019 instructions accordingly. The comment did not object to the agencies' proposed revisions to the FFIEC 019, and therefore the agencies will adopt those revisions as proposed.

III. Request for Comment

Public comment is requested on all aspects of this notice. Comment is also specifically invited on:

a. Whether the information collection is necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. 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; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted to the Board in response to this notice will be shared with the other agencies. All comments will become a matter of public record.

Board of Governors of the Federal Reserve System.

Ann Misback,
Secretary of the Board.

[FR Doc. 2021-17739 Filed 8-17-21; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as

other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551-0001, not later than September 17, 2021.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to Applications.Comments@atl.frb.org:
1. *Lafayette Banking Company, Mayo, Florida*; to become a bank holding company by acquiring Lafayette State Bank, Mayo, Florida.

Board of Governors of the Federal Reserve System, August 13, 2021.

Ann Misback,
Secretary of the Board.

[FR Doc. 2021-17732 Filed 8-17-21; 8:45 am]

BILLING CODE P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Notice of Board Meeting

DATES: August 24, 2021 at 10:00 a.m.

ADDRESSES: Telephonic. Dial-in (listen only) information: Number: 1-415-527-5035, Code: 199 981 0184; or via web: <https://tspmeet.webex.com/tspmeet/onstage/g.php?MTID=ec2075faccae9511e93ed59f66aef58ec>.

FOR FURTHER INFORMATION CONTACT: Kimberly Weaver, Director, Office of External Affairs, (202) 942-1640.

SUPPLEMENTARY INFORMATION:

Board Meeting Agenda

Open Session

1. Approval of the July 27, 2021 Board Meeting Minutes
2. Monthly Reports
 - (a) Participant Activity Report
 - (b) Investment Report
 - (c) Legislative Report
3. Quarterly Reports

- (d) Metrics
4. FY22 Budget Review and Approval
5. Participant Survey Report

Closed Session

6. Information covered under 5 U.S.C. 552b(c)(9)(B) and 552b(c)(10).
Authority: 5 U.S.C. 552b (e)(1).

Dated: August 12, 2021.

Dharmesh Vashee,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2021-17680 Filed 8-17-21; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Federal Trade Commission (FTC or Commission) is seeking public comment on its proposal to extend for an additional three years the Office of Management and Budget (OMB) clearance for information collection requirements contained in the rules and regulations under the Pay-Per-Call Rule (Rule). That clearance expires on November 30, 2021.

DATES: Comments must be received on or before October 18, 2021.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below. Write "Pay-Per-Call Rule; PRA Comment: FTC File No. P072108" on your comment, and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: P. Connell McNulty, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Mail Code CC-8528, 600 Pennsylvania Ave. NW, Washington, DC 20580, (202) 326-2061.

SUPPLEMENTARY INFORMATION:

Title: Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992 ("Pay-Per-Call Rule"), 16 CFR part 308.

OMB Control Number: 3084-0102.

Type of Review: Extension of a currently approved collection.

Abstract: The existing reporting and disclosure requirements of the Pay-Per-Call Rule are mandated by the Telephone Disclosure and Dispute Resolution Act of 1992 (TDDRA) to help prevent unfair and deceptive acts and practices in the advertising and operation of pay-per-call services and in the collection of charges for telephone-billed purchases. The information obtained by the Commission pursuant to the reporting requirement is used for law enforcement purposes. The disclosure requirements ensure that consumers are told about the costs of using a pay-per-call service, that they will not be liable for unauthorized non-toll charges on their telephone bills, and how to deal with disputes about telephone-billed purchases.

Likely Respondents: telecommunications common carriers (subject to the reporting requirement only, unless acting as a billing entity), information providers (vendors) offering one or more pay-per-call services or programs, and billing entities.

Estimated Annual Hours Burden: 1,029,570 hours (18 + 1,029,552)

Reporting: 18 hours for reporting by common carriers

Disclosure: 1,029,552 [(21,240 hours for advertising by vendors + 21,732 hours for preamble disclosure which applies to every pay-per-call service + 7,080 burden hours for telephone-billed charges in billing statements (applies to vendors; applies to common carriers if acting as billing entity) + 11,500 burden hours for dispute resolution procedures in billing statements (applies to billing entities) + 968,000 hours for disclosures related to consumers reporting a billing error (applies to billing entities)]

Estimated annual cost burden: \$50,456,136 (solely relating to labor costs).¹

¹ Non-labor (e.g., capital/other start-up) costs are generally subsumed in activities otherwise undertaken in the ordinary course of business (e.g., business records from which only existing information must be reported to the Commission, pay-per-call advertisements or audiotext to which cost or other disclosures are added, etc.). To the extent that entities incur operating or maintenance expenses, or purchase outside services to satisfy the Rule's requirements, staff believe those expenses are also included in (or, if contracted out, would be comparable to) the annual burden hour and cost estimates provided below (where such costs are

As required by section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), the FTC is providing this opportunity for public comment before requesting that OMB extend the existing clearance for the information collection requirements contained in the Commission's Pay-Per-Call Rule.

Burden Estimates

Brief Description of the Need for and Proposed Use of the Information

The existing reporting and disclosure requirements are mandated by the TDDRA to help prevent unfair and deceptive acts and practices in the advertising and operation of pay-per-call services and in the collection of charges for telephone-billed purchases. The information obtained by the Commission pursuant to the reporting requirement is used for law enforcement purposes. The disclosure requirements ensure that consumers are told about the costs of using a pay-per-call service, that they will not be liable for unauthorized non-toll charges on their telephone bills, and how to deal with disputes about telephone-billed purchases.

Likely Respondents and Their Estimated Number

Respondents are telecommunications common carriers (subject to the reporting requirement only, unless acting as a billing entity), information providers (vendors) offering one or more pay-per-call services or programs, and billing entities. Staff estimates that there are 6 common carriers, approximately 5,900 vendors, and approximately 2,300 possible billing entities. The FTC seeks public comment or data on these estimates and those stated below.

Estimated annual reporting and disclosure burden: 1,029,570 hours; \$50,456,136 in associated labor costs.

The burden hour estimate for each reporting and disclosure requirement has been multiplied by a "blended" wage rate (expressed in dollars per hour), based on the particular skill mix needed to carry out that requirement, to determine its total annual cost. The blended rate calculations are based on the following skill categories and average wage rates and/or labor costs: \$123/hour for professional (attorney) services; \$20/hour for skilled clerical workers; \$46/hour for computer programmers; and \$60/hour for management time. These figures are averages, based on the most currently available Bureau of Labor Statistics ("BLS") cost figures posted online. FTC

labor-related), or are otherwise included in the ordinary cost of doing business (regarding non-labor costs).

staff calculated labor costs by applying appropriate hourly cost figures to the burden hours discussed further below.

(1) Reporting Burden (Applies to Common Carriers)

The Rule provides that common carriers must make available to the Commission, upon written request, any records and financial information maintained by such carrier relating to the arrangements between the carrier and any vendor or service bureau (other than for the provision of local exchange service). See 16 CFR 308.6. Staff believes that the resulting burden on this segment of the industry will be minimal, since OMB's definition of "burden" for PRA purposes excludes any business effort that would be expended regardless of a regulatory requirement. 5 CFR 1320.3(b)(2). Because this reporting requirement permits staff to seek information limited to that which is already maintained by the carriers, the only burden would be the time an entity expends to compile and provide the information to the Commission. Because the Commission has seldom needed to rely on this requirement, staff estimates the annual time for reporting at 3 hours per entity.

In obtaining OMB clearance for this reporting requirement in 2015, staff estimated a total reporting burden of 18 hours. For 2021, staff is maintaining the total burden estimate of 18 hours, based on an average estimate of 3 hours expended by 6 common carriers. Using a \$56/hour blended wage rate, the FTC now estimates an annual cost of \$1,008.

(2) Disclosure Burden

(a) Advertising (applies to vendors). FTC staff estimates that the annual burden on the industry for the Rule's advertising disclosure requirements is 21,240 hours. The estimate reflects the burden on approximately 5,900 vendors who must make cost disclosures for all pay-per-call services and additional disclosures if the advertisement is (a) directed to individuals under 18 or (b) for certain pay-per-call services. Because of continued industry changes and the fact that the Commission has seldom needed to rely on this requirement, staff is retaining the estimated percentage of advertising both directed to individuals under 18 and relating to certain other pay-per-call services to 20 percent of overall pay-per-call services. FTC staff estimates that each disclosure mandated by the Rule requires approximately one hour of compliance time. The total estimated annual cost of these burden hours is \$1,040,760, applying a blended wage rate of \$49/hour.

(b) The Rule's preamble disclosure (applies to every pay-per-call service). To comply with the Act, the Pay-Per-Call Rule also requires that every pay-per-call service be preceded by a free preamble and that four different disclosures be made in each preamble. Additionally, preambles to sweepstakes pay-per-call services and services that offer information on federal programs must provide additional disclosures. Each preamble need only be prepared one time, unless the cost or other information is changed. There is no additional burden on the vendor to make the disclosures for each telephone call, because the preambles are taped and play automatically when a caller dials the pay-per-call number.

Staff believes that the industry has had at least a 12 percent reduction in size since 2015 (when there were an estimated 20,580 pay-per-call services). Accordingly, staff now estimates that there are no more than 18,110 advertised pay-per-call services.

As with advertising disclosures, preambles for certain pay-per-call services require additional preamble disclosures. Consistent with the estimates of advertised pay-per-call services discussed above, staff estimates that 20 percent of all such pay-per-call services (3,622) relating to certain types of pay-per-call services would require such additional disclosures. Staff estimates that it would require no more than one hour to draft each type of disclosure because the disclosures applicable to the preamble closely approximate in content and volume the advertising disclosures discussed above. Accordingly, staff estimates a total of 21,732 burden hours (18,110 + 3,622) to comply with these requirements. At one hour each, cumulative labor cost associated with these disclosures is \$1,064,868, using a blended wage rate of \$49/hour (*i.e.*, the same blended rate used for advertising disclosures).

(c) Telephone-billed charges in billing statements (applies to vendors; applies to common carriers if acting as billing entity). Section 308.5(j) of the Rule, 16 CFR 308.5(j), requires that vendors ensure that certain disclosures appear on each billing statement that contains a charge for a call to a pay-per-call service. Because these disclosures appear on telephone bills already generated by the local telephone companies, and because the carriers are already subject to nearly identical requirements pursuant to the FCC's rules, FTC staff estimated that the burden to comply would be minimal. At most, the burden on the vendor would be limited to spot checking telephone bills to ensure that the charges are

displayed in the manner required by the Rule.

As it had in the 2015 PRA submission, FTC staff estimates that only 10 percent of vendors would monitor billing statements in this manner and that it would take 12 hours per year to conduct such checks. Using the total estimated number of vendors (5,900), this results in a total of 7,080 burden hours. The total annual cost would be at most \$354,000, using a blended rate of \$50/hour.

(d) Dispute resolution procedures in billing statements (applies to billing entities). This disclosure requirement is set forth in 16 CFR 308.7(c). The blended rate used for these disclosures is \$49/hour. FTC staff previously estimated that the billing entities would spend approximately 5 hours each to review, revise, and provide the disclosures on an annual basis. The estimated hour burden for the annual notice component of this requirement is 11,500 burden hours (based on 2,300 possible billing entities each requiring 5 hours), or a total cost of \$563,500.

(e) Further disclosures related to consumers reporting a billing error (applies to billing entities).

As in the 2015 PRA submission for this Rule, FTC staff estimates that the incremental disclosure obligations related to consumers reporting a billing error under section 308.7(d) requires, on average, about one hour per each billing error. Previously, staff projected that approximately 5 percent of an estimated 22,001,000 calls made to pay-per-call services each year involves such a billing error. The staff is now reducing its prior estimate of the number of those calls by approximately 12 percent (to 19,360,880 calls) to reflect recent changes in the amount of pay-per-call services and their billing. Assuming the same apportionment (5 percent) of overall calls to pay-per-call services, this amounts to 968,000 hours, cumulatively. Applying the \$49/hour blended wage rate, the estimated annual cost is \$47,432,000.

Request for Comments

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the

burden of maintaining records and providing disclosures to consumers. All comments must be received on or before October 18, 2021.

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before October 18, 2021. Write “Pay-Per-Call Rule; PRA Comment: FTC File No. P072108” on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including the <https://www.regulations.gov> website.

Due to the public health emergency in response to the COVID-19 outbreak and the agency’s heightened security screening, postal mail addressed to the Commission will be subject to delay. We encourage you to submit your comments online through the <https://www.regulations.gov> website.

If you prefer to file your comment on paper, write “Pay-Per-Call Rule; PRA Comment: FTC File No. P072108” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex J), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will become publicly available at <https://www.regulations.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential”—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs,

sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at www.regulations.gov, we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 18, 2021. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2021-17662 Filed 8-17-21; 8:45 am]

BILLING CODE 6750-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC-2021-0089]

Advisory Committee on Immunization Practices (ACIP)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting and request for comment.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Centers for Disease Control and Prevention (CDC), announces the following meeting of the Advisory Committee on Immunization Practices (ACIP). This meeting is open to the

public. The meeting will be webcast live via the World Wide Web. A notice of this ACIP meeting has also been posted on CDC’s ACIP website at: <http://www.cdc.gov/vaccines/acip/index.html>. In addition, CDC has sent notice of this ACIP meeting by email to those who subscribe to receive email updates about ACIP.

DATES: The meeting will be held on August 24, 2021, from 10:00 a.m. to 5:00 p.m., EDT (dates and times subject to change), see the ACIP website for updates: <http://www.cdc.gov/vaccines/acip/index.html>. The public may submit written comments from August 18, 2021 through August 24, 2021.

ADDRESSES: You may submit comments, identified by Docket No. CDC-2021-0089 by any of the following methods:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments.
- **Mail:** Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H24-8, Atlanta, Georgia 30329-4027, Attn: August 24, 2021 ACIP Meeting.

Instructions: All submissions received must include the Agency name and Docket Number. All relevant comments received in conformance with the <https://www.regulations.gov> suitability policy will be posted without change to <https://www.regulations.gov>, including any personal information provided. For access to the docket to read background documents or comments received, go to <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Stephanie Thomas, ACIP Committee Management Specialist, Centers for Disease Control and Prevention, National Center for Immunization and Respiratory Diseases, 1600 Clifton Road NE, MS-H24-8, Atlanta, Georgia 30329-4027; Telephone: (404) 639-8367; Email: ACIP@cdc.gov.

SUPPLEMENTARY INFORMATION: In accordance with 41 CFR 102-3.150(b), less than 15 calendar days’ notice is being given for this meeting due to the exceptional circumstances of the COVID-19 pandemic and rapidly evolving COVID-19 vaccine development and regulatory processes. A notice of this ACIP meeting has also been posted on CDC’s ACIP website at: <http://www.cdc.gov/vaccines/acip/index.html>. In addition, CDC has sent notice of this ACIP meeting by email to those who subscribe to receive email updates about ACIP.

Purpose: The committee is charged with advising the Director, CDC, on the use of immunizing agents. In addition, under 42 U.S.C. 1396s, the committee is mandated to establish and periodically

review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding dosing interval, dosage, and contraindications to administration of vaccines. Further, under provisions of the Affordable Care Act, section 2713 of the Public Health Service Act, immunization recommendations of the ACIP that have been approved by the Director of the Centers for Disease Control and Prevention and appear on CDC immunization schedules must be covered by applicable health plans.

Matters To Be Considered: The agenda will include discussions on additional doses of COVID-19 vaccine, including booster doses. Agenda items are subject to change as priorities dictate. For more information on the meeting agenda visit <https://www.cdc.gov/vaccines/acip/meetings/meetings-info.html>.

Meeting Information: The meeting will be webcast live via the World Wide Web; for more information on ACIP please visit the ACIP website: <http://www.cdc.gov/vaccines/acip/index.html>.

Public Participation

Interested persons or organizations are invited to participate by submitting written views, recommendations, and data. Please note that comments received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. Comments will be posted on <https://www.regulations.gov>. Therefore, do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your comments, that information will be on public display. CDC will review all submissions and may choose to redact, or withhold, submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign. CDC will carefully consider all comments submitted into the docket.

Written Public Comment: Written comments must be received on or before August 24, 2021.

Oral Public Comment: This meeting will include time for members of the public to make an oral comment. Oral public comment will occur before any scheduled votes including all votes relevant to the ACIP's Affordable Care Act and Vaccines for Children Program roles. Priority will be given to

individuals who submit a request to make an oral public comment before the meeting according to the procedures below.

Procedure for Oral Public Comment: All persons interested in making an oral public comment at the August 24, 2021, ACIP meeting must submit a request at <http://www.cdc.gov/vaccines/acip/meetings/> no later than 11:59 p.m., EDT, August 22, 2021, according to the instructions provided.

If the number of persons requesting to speak is greater than can be reasonably accommodated during the scheduled time, CDC will conduct a lottery to determine the speakers for the scheduled public comment session. CDC staff will notify individuals regarding their request to speak by email by 12:00 p.m., EDT, August 23, 2021. To accommodate the significant interest in participation in the oral public comment session of ACIP meetings, each speaker will be limited to 3 minutes, and each speaker may only speak once per meeting.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2021-17808 Filed 8-16-21; 4:15 pm]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Award of a Single-Source Grant To Fund Task Force for Global Health, Inc.

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), located within the Department of Health and Human Services (HHS) announces the award of approximately \$47,000,000 in COVID-19 funding with an expected total funding of \$100,000,000 over a five-year period to the Task Force for

Global Health to expand the influenza and COVID-19 vaccine coverage in low- and middle-income countries.

DATES: The period for this award will be September 30, 2021 through September 29, 2026.

FOR FURTHER INFORMATION CONTACT: Archana Kumar, National Center for Immunization and Respiratory Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS-H24-8, Atlanta, GA 30329, Telephone: 800-232-6348, E-Mail: eocevent445@cdc.gov.

SUPPLEMENTARY INFORMATION: The single-source award will introduce and/or expand influenza vaccine programs, contribute to evidence base for influenza control and prevention, and leverage efforts to deploy pandemic vaccines to low- and middle-income countries.

The Task Force for Global Health will be awarded as a single-source because of their specific experience collaborating with multiple partners in facilitating the use of influenza vaccines in low- to middle-income countries and in developing local and global evidence base for sustained use of lifesaving vaccines since 2014. The Task Force for Global Health is uniquely qualified to support countries to plan for, implement and evaluate COVID-19 vaccination programs since they are currently working with the same risk groups using established tools and platforms under an existing cooperative agreement. The Task Force for Global Health leads the Partnership for Influenza Vaccine Introduction which includes ministries of health from 15 countries, private industry, and the United Nations International Children's Emergency Fund. This Partnership creates sustainable, seasonal influenza vaccination programs in the targeted countries, works with the World Health Organization to prepare for pandemic influenza, and supports countries' efforts to control and prevent seasonal outbreaks.

Summary of the Award

Recipient: The Task Force For Global Health.

Purpose of the Award: The purpose of award is to expand the use of influenza and COVID-19 vaccines in low- and middle-income countries (LMICs), support influenza vaccine introduction through a public-private partnership, establish an evidence base for global vaccine introduction decisions, and leverage this partnership to support readiness for and deployment of future pandemic vaccines. The recipient will be expected to assist partner countries

to plan, implement, and evaluate vaccination programs for influenza and COVID-19.

Amount of Award: \$47,000,000 in Federal Fiscal Year (FFY) 2021 funds, and an estimated total of \$100,000,000 over the five-year period of performance, subject to availability of funds.

Period of Performance: September 30, 2021 through September 29, 2026.

Authority: Section 307 of the Public Health Service Act, as amended (42 U.S.C. 242l).

Dated: August 12, 2021.

Joseph I. Hungate III,

Deputy Director, Office of Financial Resources, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2021-17678 Filed 8-17-21; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Meeting

AGENCY: Office on Trafficking in Persons, Administration for Children and Families, Department of Health and Human Services.

ACTION: Announcement of meeting and call for public comments on states' efforts to improve the nation's response to the sex trafficking of children and youth.

SUMMARY: Notice is hereby given, pursuant to the provisions of the Federal Advisory Committee Act (FACA) and the Preventing Sex Trafficking and Strengthening Families Act, that a meeting of the National Advisory Committee on the Sex Trafficking of Children and Youth in the United States (the Committee) will be held on September 8 and 9, 2021. The purpose of the meeting is for the Committee to begin reviewing responses to the Committee's State Self-Assessment Survey and develop a framework for the Committee's final report. The members of the Committee request comments from the public to inform their ongoing work and final report. Please submit your comments to NAC@nhttac.org with the subject "NAC Comments" as soon as possible and before September 6, 2021.

DATES: The meeting will be held on September 8 and 9, 2021.

ADDRESSES: The meeting will be held virtually. Please register for this event online: <https://www.acf.hhs.gov/otip/>

partnerships/national-advisory-committee.

FOR FURTHER INFORMATION, CONTACT:

Katherine Chon (Designated Federal Officer) at EndTrafficking@acf.hhs.gov or (202) 205-5778, or 330 C Street SW, Washington, DC 20201. Additional information is available at <https://www.acf.hhs.gov/otip/partnerships/the-national-advisory-committee>.

SUPPLEMENTARY INFORMATION: The formation and operation on behalf of the Committee are governed by the provisions of Public Law 92-463, as amended (5 U.S.C. App. 2), which sets forth standards for the formation and use of federal advisory committees.

Purpose of the Committee: The purpose of the Committee is to advise the Secretary and the Attorney General on practical and general policies concerning improvements to the nation's response to the sex trafficking of children and youth in the United States. HHS established the Committee pursuant to Section 121 of the Preventing Sex Trafficking and Strengthening Families Act of 2014 (Pub. L. 113-183).

Tentative Agenda: The agenda can be found at <https://www.acf.hhs.gov/otip/partnerships/the-national-advisory-committee>. To submit written statements, email NAC@nhttac.org, by September 6, 2021. Please include your name, organization, and phone number. More details on these options are below.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102-3.140 through 102-3.165, and subject to the availability of space, this meeting is open to the public virtually.

Written Statements: Pursuant to 41 CFR 102-3.105(j) and 102-3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public may submit written statements in response to the stated agenda of the meeting, or to the Committee's mission, in general. Organizations with recommendations on strategies to engage states and stakeholders are encouraged to submit their comments or resources (hyperlinks preferred). Written comments or statements received after September 6, 2021, may not be provided to the Committee until its next meeting.

Verbal Statements: Pursuant to 41 CFR 102-3.140d, the Committee is not obligated to allow a member of the public to speak or otherwise address the Committee during the meeting. Members of the public are invited to provide verbal statements during the Committee meeting only at the time and manner described in the agenda. The request to speak should include a brief statement of the subject matter to be

addressed and should be relevant to the stated agenda of the meeting or the Committee's mission in general.

Minutes: The minutes of this meeting will be available for public review and copying within 90 days at: <https://www.acf.hhs.gov/otip/partnerships/the-national-advisory-committee>.

Linda Hitt,

Director, Executive Secretariat.

[FR Doc. 2021-17714 Filed 8-17-21; 8:45 am]

BILLING CODE 4184-40-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Elizabeth Pitts, Ph.D., 240-669-5299; elizabeth.pitts@nih.gov. Licensing information may be obtained by communicating with the indicated licensing contact at the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD 20852; tel. 301-496-2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished information related to the invention.

SUPPLEMENTARY INFORMATION: Technology description follows.

Tumor Associated Calcium Signal Transducer 2 (TACSTD2)-Overexpressing Huh7.5 Cells That Are More Permissive to HCV Cell Entry and Replication Compared to the Model Huh7.5 Cell Line

Description of Technology

Worldwide, 130-150 million individuals are chronically infected with hepatitis C virus (HCV), a major cause of liver-associated morbidity and mortality worldwide. Despite recent advances in antiviral drugs that can cure some individuals, a rapid decline of the

global disease burden is hampered by remarkably high treatment costs and a high number of undiagnosed infections. Moreover, a significant number of patients develop resistance and additional treatment modalities may be needed to dramatically reduce the worldwide incidence of HCV infection. The subject cell line may be a useful tool for studying the mechanism of HCV cellular entry and replication and could be incorporated into an in vitro assay to measure the effectiveness of novel HCV targeted therapies or as a system for improved propagation of HCV in culture.

By overexpressing TACSTD2 in Huh7.5 cells, scientists at the National Institute of Allergy and Infectious Diseases (NIAID) discovered that they could restore the cellular localization of two host cell HCV-entry factors that become dysregulated in hepatocellular carcinoma (HCC) cells. Overexpression of TACSTD2 makes Huh7.5 cells more broadly permissive to infection and replication by multiple HCV genotypes in comparison to the canonical Huh7.5 cell model. HCV does not replicate in malignant HCC cells, possibly caused in part by downregulation of TACSTD2 expression.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404.

Potential Commercial Applications

- Cell line to study hepatitis C virus infection and replication or propagate HCV in culture.
- Cell line to study cancer.

Development Stage

- Material.
- Inventors:* Patrizia Farci and Vandana Sekhar (NIAID).

Publication: Sekhar V, Pollicino T, Diaz G, Engle RE, Alayli F, Melis M, Kabat J, Tice A, Pomerence A, Altan-Bonnet N, Zamboni F, Lusso P, Emerson SU, and Farci P. (2018) Infection with hepatitis C virus depends on TACSTD2, a regulator of claudin-1 and occludin highly downregulated in hepatocellular carcinoma. *PLoS Pathog* 14: e1006916. doi: 10.1371/journal.ppat.1006916.

Licensing Contact: To license this technology, please contact Elizabeth Pitts, Ph.D., 240-669-5299; elizabeth.pitts@nih.gov, and reference E-040-2020.

Dated: August 12, 2021.

Surekha Vathyam,

Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2021-17687 Filed 8-17-21; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Cancer Advisory Board.

The meeting will be held as a virtual meeting and is open to the public as indicated below. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting should notify the Contact Person listed below in advance of the meeting. The meeting will be videocast and can be accessed from the NIH Videocasting and Podcasting website (<http://videocast.nih.gov/>).

A portion of the National Cancer Advisory Board 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 grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory Board.

Date: August 31, 2021.

Open: 1:00 p.m. to 3:10 p.m.

Agenda: NCAB Subcommittee Meetings—Subcommittee on Planning and Budget and *Ad Hoc* Subcommittee on Global Cancer Research.

Place: National Cancer Institute—Shady Grove, 9609 Medical Center Drive, Rockville, MD 20850 (Virtual Meeting).

Name of Committee: National Cancer Advisory Board.

Date: September 1, 2021.

Open: 1:00 p.m. to 4:15 p.m.

Agenda: Director's and Program reports and presentations; business of the Board.

Closed: 4:25 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute—Shady Grove, 9609 Medical Center Drive, Rockville, MD 20850 (Virtual Meeting).

Contact Person: Paulette S. Gray, Ph.D., Director, Division of Extramural Activities, National Cancer Institute—Shady Grove, National Institutes of Health, 9609 Medical Center Drive, 7th Floor, Room 7W444, Bethesda, MD 20892, 240-276-6340, grayp@mail.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on

this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: NCAB: <https://deainfo.nci.nih.gov/advisory/ncab/ncabmeetings.htm>, where an agenda and any additional information for the meetings will be posted when available.

This notice is being published less than 15 days prior to the meeting due to scheduling difficulties.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 13, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021-17742 Filed 8-17-21; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council for Nursing Research.

The meeting will be open to the public as indicated below via videocast. The URL link to this meeting is <https://videocast.nih.gov/watch=42425>.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the 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 grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Nursing Research.

Date: September 14, 2021.

Open: 11:00 a.m. to 3:30 p.m.

Agenda: Discussion of Program Policies and Issues.

Place: National Institutes of Health, Building 31, 9000 Rockville Pike, Bethesda, MD 20892 (Virtual Meeting).

Closed: 3:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 9000 Rockville Pike, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Susan E. Old, Ph.D., Acting Director, Division of Extramural Science Programs, National Institutes of Health, NINR, Bethesda, MD 20892-9824, (301) 496-7291, oldse@mail.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: <https://www.ninr.nih.gov/aboutninr/nacnr> where an agenda and any additional information for the meeting will be posted when available. (Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: August 13, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021-17744 Filed 8-17-21; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615-NEW]

Agency Information Collection Activities; New Collection: Petition for Nonimmigrant Worker: H-2A Classification and Petition for Nonimmigrant Worker: H-2B Classification

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed new collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated

burden (*i.e.*, the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until October 18, 2021.

ADDRESSES: All submissions received must include the OMB Control Number 1615-NEW in the body of the letter, the agency name and Docket ID USCIS-2021-0017. Submit comments via the Federal eRulemaking Portal website at <https://www.regulations.gov> under e-Docket ID number USCIS-2021-0017.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721-3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at <https://www.uscis.gov>, or call the USCIS Contact Center at 800-375-5283 (TTY 800-767-1833).

SUPPLEMENTARY INFORMATION:

Comments

USCIS is separating Form I-129, Petition for Nonimmigrant Worker, (OMB control number 1615-0009) into several individual forms. These new forms will combine information from the main Form I-129 with information from the current Supplements to create unique forms tailored to specific nonimmigrant classifications. USCIS believes separating the current Form I-129 into several individual forms will consolidate and simplify the information collection requirements for respondents.

USCIS is creating Form I-129H2A, Petition for Nonimmigrant Worker: H-2A Classification, and Form I-129H2B, Petition for Nonimmigrant Worker: H-2B Classification.

Form I-129H2A will collect information for the H-2A nonimmigrant program. The H-2A program allows U.S. employers or U.S. agents who meet specific regulatory requirements to bring noncitizens to the United States to fill temporary agricultural jobs.

Form I-129H2B will collect information for the H-2B nonimmigrant program. The H-2B program allows U.S. employers or U.S. agents who meet specific regulatory requirements to bring

noncitizens to the United States to fill temporary nonagricultural jobs.

USCIS will request approval of Form I-129H2A and Form I-129H2B from OMB as a new information collection. USCIS previously submitted these forms to OMB for approval during the 2020 USCIS Fee Rule; however, this rule was enjoined and therefore the approval is not in effect. USCIS has determined that the creation of this new information collection does not require rulemaking and is therefore proceeding to seek public comments on Form I-129H2A and Form I-129H2B via a notice of information collection published in the **Federal Register** in accordance with the Paperwork Reduction Act, 44 U.S.C. 3501-3521.

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: <https://www.regulations.gov> and entering USCIS-2021-0017 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at <https://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <https://www.regulations.gov>.

Written comments and suggestions from the public and affected agencies 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:* New Collection.

(2) *Title of the Form/Collection:* Petition for a Nonimmigrant Worker: H-2A Classification and Petition for a Nonimmigrant Worker: H-2B Classification.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-129H2A; I-129H2B; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. USCIS will use the data collected on Form I-129H2A to determine eligibility for the requested H-2A nonimmigrant petition and/or requests to extend or change nonimmigrant status. An employer or agent uses this form to petition USCIS for a noncitizen to temporarily enter as an H-2A nonimmigrant. An employer or agent also uses this form to request an extension of stay or change of status on behalf of the noncitizen worker.

USCIS will use the data collected on Form I-129H2B to determine eligibility for the requested H-2B nonimmigrant petition and/or requests to extend or change nonimmigrant status. An employer or agent uses this form to petition USCIS for a noncitizen to temporarily enter as an H-2B nonimmigrant. An employer or agent also uses this form to request an extension of stay or change of status on behalf of the noncitizen worker.

Both forms serve the purpose of standardizing requests for nonimmigrant workers in the H-2A and H-2B classifications and ensuring that basic information required for assessing eligibility is provided by the petitioner. They also assist USCIS in compiling information required by Congress annually to assess effectiveness and utilization of certain nonimmigrant classifications.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I-129H2A is 12,008 and the estimated hour burden per response is 3 hours; the estimated total number of respondents for the information collection Form I-129H2A Named Worker Attachment is 2,740 with 24 responses per respondent and the estimated hour burden per response is 0.5 hours; the estimated total number of respondents for the information

collection Form I-129H2A Joint Employer Supplement is 5,000 and the estimated hour burden per response is 0.167 hours; the estimated total number of respondents for the information collection Form I-129H2B is 6,340 and the estimated hour burden per response is 3 hours; the estimated total number of respondents for the information collection Form I-129H2B Named Worker Attachment is 2,421 with 24 responses per respondent and the estimated hour burden per response is 0.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 117,811 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$12,024,220.

Dated: August 13, 2021

Samantha L. Deshommes,
Chief, Regulatory Coordination Division,
Office of Policy and Strategy, U.S. Citizenship
and Immigration Services, Department of
Homeland Security.

[FR Doc. 2021-17723 Filed 8-17-21; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615-NEW]

Agency Information Collection Activities; New Collection: Petition for Nonimmigrant Worker: E and TN Classifications; Petition for Nonimmigrant Worker: L Classifications; Petition for Nonimmigrant Worker: H-3, P, Q or R Classifications; and Petition for Nonimmigrant Worker: O Classifications

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this new collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of

respondents, the estimated burden (*i.e.*, the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until October 18, 2021.

ADDRESSES: All submissions received must include the OMB Control Number 1615-NEW in the body of the letter, the agency name and Docket ID USCIS-2021-0016. Submit comments via the Federal eRulemaking Portal website at <https://www.regulations.gov> under e-Docket ID number USCIS-2021-0016.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721-3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at <https://www.uscis.gov>, or call the USCIS Contact Center at 800-375-5283 (TTY 800-767-1833).

SUPPLEMENTARY INFORMATION:

Comments

USCIS is separating Form I-129, Petition for Nonimmigrant Worker, (OMB control number 1615-0009) into several individual forms. These new forms will combine information from the main Form I-129 with information from the current Supplements to create unique forms tailored to specific nonimmigrant classifications. USCIS believes separating the current Form I-129 into several individual forms will consolidate and simplify the information collection requirements for respondents.

USCIS is creating Form I-129E&TN, Petition for Nonimmigrant Worker: E and TN Classifications; Form I-129L, Petition for Nonimmigrant Worker: L Classifications; Form I-129MISC, Petition for Nonimmigrant Worker: H-3, P, Q or R Classifications; and Form I-129O, Petition for Nonimmigrant Worker: O Classifications.

Form I-129E&TN will collect information for the E and the TN nonimmigrant programs. The Treaty Trader (E-1) and Treaty Investor (E-2) classifications are for citizens of countries with which the United States maintains treaties of commerce and navigation. An E-2 CNMI or E-2C

investor is a noncitizen who seeks to enter or remain in the Commonwealth of the Northern Mariana Islands (CNMI) in order to maintain an investment in the CNMI that was approved by the CNMI government before November 28, 2009. The E-3 classification applies to nationals of Australia who are coming to the United States solely to perform services in a specialty occupation requiring theoretical and practical application of a body of highly specialized knowledge and at least the attainment of a bachelor's degree, or its equivalent, as a minimum for entry into the occupation in the United States. The TN Classification was created to implement part of a trilateral North American Free Trade Agreement (NAFTA) between Canada, Mexico, and the United States. The United States-Mexico-Canada Agreement (USMCA) has replaced NAFTA, and visas previously issued to NAFTA professionals are now issued to USMCA professionals. Congress has amended 8 U.S.C. 1184(e) to replace references to NAFTA with references to the USMCA.

Form I-129L will collect information for the L nonimmigrant program. The L-1 intracompany transferee nonimmigrant classification permits a multinational organization to transfer certain employees from one of its affiliated foreign entities to one of its entities in the United States. The L-1A classification is for employees coming to the United States temporarily to perform services in a managerial or executive capacity. The L-1B classification is for employees coming to the United States temporarily to perform services that require specialized knowledge.

Form I-129MISC will collect information for H-3, P, Q, or R classifications. The H-3 classification is for noncitizens coming to the United States temporarily to participate in a special education exchange visitor program in the education of children with physical, mental, or emotional disabilities. The P classifications are for noncitizens coming to the United States as internationally recognized athletes or teams; professional athletes; theatrical ice skaters; an entertainment group; artists or entertainers in reciprocal exchange programs; artists or entertainers coming to perform, teach or coach under a culturally unique program; or as support personnel for another nonimmigrant in a P classification. The Q-1 classification is for noncitizens coming to the United States temporarily to participate in an international cultural exchange program for the purpose of providing practical training, employment, and the sharing of the history, culture, and traditions of

the country of the visitor's nationality. The R-1 classification is for noncitizens coming to the United States temporarily to be employed at least part time (average of at least 20 hours per week) by a bona fide nonprofit religious organization in the United States (or a bona fide organization that is affiliated with the religious denomination in the United States) to work (1) solely as a minister, (2) in a religious vocation, or (3) in a religious occupation.

Form I-129O will collect information for the O nonimmigrant program. The O classifications are for persons with extraordinary ability in the sciences, arts, education, business, or athletics; persons with extraordinary achievement in the motion picture or television industry; and qualifying essential support personnel.

USCIS will request approval of Form I-129E&TN, Form I-129L, Form I-129MISC, and Form I-129O from OMB as a new information collection. USCIS previously submitted these forms to OMB for approval during the 2020 USCIS Fee Rule; however, this rule was enjoined and therefore the approval is not in effect. USCIS has determined that the creation of this new information collection does not require rulemaking and is therefore proceeding to seek public comments on these forms via a notice of information collection published in the **Federal Register** in accordance with the Paperwork Reduction Act, 44 U.S.C. 3501-3521.

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: <https://www.regulations.gov> and entering USCIS-2021-0016 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at <https://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <https://www.regulations.gov>.

Written comments and suggestions from the public and affected agencies 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:* New Collection.

(2) *Title of the Form/Collection:* Petition for Nonimmigrant Worker: E or TN Classifications; Petition for Nonimmigrant Worker: L Classifications; Petition for Nonimmigrant Worker: H-3, P, Q, or R Classifications; Petition for Nonimmigrant Worker: O Classifications.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-129E&TN; I-129L; I-129MISC; I-129O; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. USCIS will use the data collected on Form I-129E&TN to determine eligibility for the requested nonimmigrant classification and/or requests to extend or change nonimmigrant status. An employer may use this form to apply to USCIS for an employee to temporarily enter the United States and work as a TN nonimmigrant. A treaty trader, treaty investor, CNMI investor, employer, or applicant also uses this form to request an extension of stay in one of these classifications for an employee or for themselves, or to change the status of an employee currently in the United States as a nonimmigrant, or their own status if they are currently in the United States as a nonimmigrant, to E-1, E-2, E-2C, E-3, or TN. An employer also uses this form to request an extension of stay in E-3 classification for an employee, or to change the status of an employee currently in the United States to an E-3 nonimmigrant. An employee also uses this form to request an extension of stay in E-3 classification for themselves, or to change their own status to an E-3

nonimmigrant if they are currently in the United States in a nonimmigrant status.

USCIS will use the data collected on Form I-129L to determine a noncitizen's eligibility for L-1A and L-1B classification. The form is also used to determine whether, in advance of filing the individual L-1 petition, certain petitioning companies or organizations have established the required intracompany relationship for an LZ Blanket petition. An employer uses this form to petition USCIS for the noncitizen to temporarily enter the United States as a nonimmigrant. An employer also uses this form to request an extension of stay or change of status on behalf of the noncitizen. The form standardizes these requests and ensures that the information required for assessing eligibility is provided by the petitioner about itself and the noncitizen.

USCIS will use the data collected on Form I-129MISC to determine eligibility for the requested nonimmigrant classification and/or requests to extend or change nonimmigrant status. An employer (or agent or sponsor, where applicable) uses this form to petition USCIS for a noncitizen to temporarily enter as an H-3, P, Q, or R nonimmigrant. An employer (or agent or sponsor, where applicable) also uses this form to request an extension of stay of an H-3, P, Q, or R nonimmigrant worker or to change the status of a noncitizen currently in the United States as a nonimmigrant to H-3, P, Q, or R. The form standardizes requests for H-3, P, Q, or R nonimmigrant workers and ensures that basic information required for assessing eligibility is provided by the petitioner.

USCIS will use the data collected on Form I-129O to determine eligibility for the requested nonimmigrant classification and/or requests to extend or change nonimmigrant status. An employer or agent uses this form to petition USCIS for a noncitizen to temporarily enter as an O nonimmigrant. An employer or agent also uses this form to request an extension of stay of an O nonimmigrant worker or to change the status of a noncitizen currently in the United States in another nonimmigrant classification to O.

These forms also serve the purpose of standardizing petitions or applications filed for these various nonimmigrant classifications and ensuring that basic information required for assessing eligibility is provided by the petitioner or applicant. They also assist USCIS in compiling information required by Congress annually to assess

effectiveness and utilization of certain nonimmigrant classifications.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I-129E&TN is 12,709 and the estimated hour burden per response is 3 hours; the estimated total number of respondents for the information collection E-1/E-2 Classification Supplement to Form I-129E&TN is 3,573 and the estimated hour burden per response is 1.75 hours; the estimated total number of respondents for the information collection E-3 Classification Supplement to Form I-129E&TN is 1,787 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection USMCA Supplement to Form I-129E&TN is 7,349 and the estimated hour burden per response is 0.5 hours.

The estimated total number of respondents for the information collection Form I-129L is 42,871 and the estimated hour burden per response is 3 hours.

The estimated total number of respondents for the information collection Form I-129MISC is 28,799 and the estimated hour burden per response is 3 hours; the estimated total number of respondents for the information collection H-3 Classification Supplement to Form I-129MISC is 1,449 and the estimated hour burden per response is 0.25 hours; the estimated total number of respondents for the information collection P Classification Supplement to Form I-129MISC is 18,524 and the estimated hour burden per response is 0.5 hours; the estimated total number of respondents for the information collection Q-1 International Cultural Exchange Alien Supplement to Form I-129MISC is 295 and the estimated hour burden per response is 0.167 hours; the estimated total number of respondents for the information collection R-1 Classification Supplement to Form I-129MISC is 8,531 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection Attachment 1-Additional Beneficiary for Form I-129MISC is 6,491 and the estimated hour burden per response is 0.5 hours.

The estimated total number of respondents for the information collection Form I-129O is 25,516 and the estimated hour burden per response is 3 hours; the estimated total number of respondents for the information

collection Attachment 1-Additional Beneficiary for Form I-129O is 1,189 and the estimated hour burden per response is 0.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 363,444 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$56,595,925.00.

Dated: August 13, 2021.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2021-17721 Filed 8-17-21; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615-NEW]

Agency Information Collection Activities; New Collection: Petition for a Nonimmigrant Worker: H-1 Classifications

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this new collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until October 18, 2021.

ADDRESSES: All submissions received must include the OMB Control Number 1615-NEW in the body of the letter, the agency name and Docket ID USCIS-2021-0015. Submit comments via the

Federal eRulemaking Portal website at <https://www.regulations.gov> under e-Docket ID number USCIS–2021–0015.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at <https://www.uscis.gov>, or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

USCIS is separating Form I–129, Petition for Nonimmigrant Worker, (OMB control number 1615–0009) into several individual forms. These new forms will combine information from the main Form I–129 with information from the current Supplements to create unique forms tailored to specific nonimmigrant classifications. USCIS believes separating the current Form I–129 into several individual forms will consolidate and simplify the information collection requirements for respondents.

USCIS is creating Form I–129H1, Petition for Nonimmigrant Worker: H–1B Classifications, to collect information for the H–1B and H–1B1 nonimmigrant programs. The H–1B classification is for individuals who will perform services in a specialty occupation, services of exceptional merit and ability relating to a Department of Defense cooperative research and development project, or services as a fashion model of distinguished merit or ability. The H–1B1 classification is for nationals of Singapore or Chile engaging in specialty occupations.

The information collection instrument posted with this 60-day **Federal Register** Notice includes changes associated with the final rule USCIS published on January 8, 2021 titled, *Modification of Registration Requirement for Petitioners Seeking To File Cap-Subject H–1B Petitions* (86 FR 1676) (H–1B Selection Final Rule). On February 8, 2021, USCIS published a rule delaying the effective date of the H–1B Selection Final Rule to December 31, 2021, titled, *Modification of Registration Requirement for Petitioners Seeking To File Cap-Subject H–1B Petitions; Delay of Effective Date* (86 FR 8543). The H–

1B Selection Final Rule changes in the information collection instrument will not be implemented before that rule's new effective date of December 31, 2021.

USCIS will request approval of Form I–129H1 from OMB as a new information collection. USCIS previously submitted Form I–129H1 to OMB for approval during the 2020 USCIS Fee Rule; however, this rule was enjoined and therefore the approval is not in effect. USCIS has determined that the creation of this new information collection does not require rulemaking and is therefore proceeding to seek public comments on Form I–129H1 via a notice of information collection published in the **Federal Register** in accordance with the Paperwork Reduction Act 44 U.S.C. 3501–3521.

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: <https://www.regulations.gov> and entering USCIS–2021–0015 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at <https://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <https://www.regulations.gov>.

Written comments and suggestions from the public and affected agencies 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:* New Collection.

(2) *Title of the Form/Collection:* Petition for a Nonimmigrant Worker: H–1 Classifications.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–129H1; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. USCIS will use the data collected on this form to determine eligibility for the requested nonimmigrant classification and/or requests to extend or change nonimmigrant status. An employer (or agent, where applicable) uses this form to petition USCIS for a noncitizen to temporarily enter the United States as an H–1B or H–1B1 nonimmigrant. An employer (or agent, where applicable) also uses this form to request an extension of stay of an H–1B or H–1B1 nonimmigrant worker or to change the status of a beneficiary currently in the United States as a nonimmigrant to H–1B or H–1B1. The form serves the purpose of standardizing requests for H–1B and H–1B1 nonimmigrant workers and ensuring that basic information required for assessing eligibility is provided by the petitioner while requesting that beneficiaries be classified under the H–1B or H–1B1 nonimmigrant employment categories. USCIS compiles data from this form to provide information required by Congress annually to assess the effectiveness and utilization of certain nonimmigrant classifications. Data collected on employers petitioning for H–1B beneficiaries is provided to the media, researchers, and the general public via the H–1B Employer Data Hub.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–129H1 is 402,034 and the estimated hour burden per response is 4.25 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,708,644.50 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this

collection of information is \$207,047,510.

Dated: August 13, 2021.

Samantha L. Deshommnes,
Chief, Regulatory Coordination Division,
Office of Policy and Strategy, U.S. Citizenship
and Immigration Services, Department of
Homeland Security.

[FR Doc. 2021-17724 Filed 8-17-21; 8:45 am]

BILLING CODE 9111-97-P

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

[Docket No. FR-7036-N-08]

**60-Day Notice of Proposed Information
Collection: Community Development
Block Grant Entitlement Program;
OMB Control No: 2506-0077**

AGENCY: Office of Community Planning
and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information
collection requirement described below
will be submitted to the Office of
Management and Budget (OMB) for
review as required by the Paperwork
Reduction Act. The Department is
soliciting public comments on the
subject proposal.

DATES: *Comments Due Date:* October 18,
2021.

ADDRESSES: Interested persons are
invited to submit comments regarding
this proposal. Comments should refer to
the proposal by name and/or OMB
Control Number and should be sent to:
Anna Guido, Reports Management

Officer, QDAM, Department of Housing
and Urban Development, 451 7th Street
SW, Room 4176, Washington, DC
20410-5000; telephone 202-402-5535
(this is not a toll-free number) or email
at *Anna.P.Guido@hud.gov* for a copy of
the proposed forms or other available
information. Persons with hearing or
speech impairments may access this
number through TTY by calling the toll-
free Federal Relay Service at (800) 877-
8339.

FOR FURTHER INFORMATION CONTACT:

Gloria Coates, Senior Community
Planning and Development Specialist,
Entitlement Communities Division,
Office of Block Grant Assistance, 451
7th Street SW, Room 7282, Washington,
DC 20410; This is not a toll-free number.
Persons with hearing or speech
impairments may access this number
through TTY by calling the toll-free
Federal Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION: This
notice informs the public that HUD is
seeking approval from OMB for the
information collection described in
Section A.

A. Overview of Information Collection

Title of Information Collection:
Community Development Block Grant
Entitlement Program.

OMB Approval Number: 2506-0077.

Type of Request: Revision of a
currently approved collection.

Form Number: Not applicable.

*Description of the need for the
information and proposed use:* This
request identifies the estimated
reporting burden associated with
information that CDBG entitlement

grantees will report in IDIS for CDBG-
assisted activities, recordkeeping
requirements, and reporting
requirements. Grantees are encouraged
to update their accomplishments in IDIS
on a quarterly basis. In addition,
grantees are required to retain records
necessary to document compliance with
statutory and regulatory requirements,
Executive Orders, 2 CFR part 200
requirements, and determinations
required to be made by grantees as a
determination of eligibility. Grantees are
required to prepare and submit their
Consolidated Annual Performance and
Evaluation Reports, which demonstrate
the progress grantees make in carrying
out CDBG-assisted activities listed in
their consolidated plans. This report is
due to HUD 90 days after the end of the
grantee's program year. The information
required for any particular activity is
generally based on the eligibility of the
activity and which of the three national
objectives (benefit low- and moderate-
income persons; eliminate/prevent
slums or blight; or meet an urgent need)
the grantee has determined that the
activity will address.

Respondents: Grant recipients
(metropolitan cities and urban counties)
participating in the CDBG Entitlement
Program.

Estimation number of Respondents:
1,227.

Estimation Number of Responses: The
proposed frequency of the response to
the collection is on an annual basis.

Frequency of Response: Annually.

Total Estimated Burdens: The total
estimated burden is 574,236.

Task	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Current Inventory: Recordkeeping pursuant to 24 CFR 570.506	1,227.00	1.00	1,227.00	129.00	158,283.00	35.16	\$5,565,230.28
Reporting pursuant to 24 CFR 570.507, 24 CFR 570.200 (e) and 570.506(c)	1,227.00	4	4,908.00	78.50	385,278.00	35.16	13,546,374.50
Entitlement communities maintain required documentation	1,227.00	1.00	1,227.00	25.00	30,675.00	35.16	1,078,533.00
.....	1,227.00	.....	.....	.....	574,236.00	.....	20,190,137.80
Total .....	.....	.....	.....	.....	.....	.....	.....

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Principal Deputy Assistant Secretary for Community Planning and Development, James Arthur Jemison II, having reviewed and approved this document, is delegating the authority to electronically sign this document to submitter, Aaron Santa Anna, who is

the Federal Register Liaison for HUD, for purposes of publication in the **Federal Register**.

Aaron Santa Anna,
Federal Register Liaison for the Department of Housing and Urban Development.
[FR Doc. 2021-17666 Filed 8-17-21; 8:45 am]
BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R3-ES-2021-N176;
FXES11130300000-201-FF03E00000]

Endangered and Threatened Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered or threatened species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the

requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before September 17, 2021.

ADDRESSES: Document availability and comment submission: Submit requests for copies of the applications and related documents, as well as any comments, by one of the following methods. All requests and comments should specify the applicant name(s) and application number(s) (e.g., TExXXXXX; see table in

SUPPLEMENTARY INFORMATION):

- *Email:* permitsR3ES@fws.gov. Please refer to the respective application number (e.g., Application No. TExXXXXX) in the subject line of your email message.

- *U.S. Mail:* Regional Director, Attn: Nathan Rathbun, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437-1458.

FOR FURTHER INFORMATION CONTACT:

Nathan Rathbun, 612-713-5343 (phone); permitsR3ES@fws.gov (email). Individuals who are hearing or speech impaired may call the Federal Relay Service at 1-800-877-8339 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), prohibits certain activities with endangered and threatened species unless authorized by a Federal permit. The ESA and our implementing regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) provide for the issuance of such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

We invite local, State, and Federal agencies; Tribes; and the public to comment on the following applications:

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ES06778A	USDA Forest Service, Shawnee National Forest, Viena, IL.	Gray bat (<i>Myotis grisescens</i>), Indiana bat (<i>Myotis sodalis</i>), northern long-eared bat (<i>Myotis septentrionalis</i>).	IL, IN, MO, OH	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts.	Capture, handle, mist-net, band, attach radio transmitters, noninvasive measurements, collect hair, fungal lift tape, swab, and wing biopsy samples, release, salvage.	Renew.
PER0015167	Michael Whitby, Lincoln, NE.	Gray bat (<i>Myotis grisescens</i>), Indiana bat (<i>Myotis sodalis</i>), northern long-eared bat (<i>Myotis septentrionalis</i>).	AL, AR, CT, DE, DC, FL, GA, IL, IN, IA, KS, KY, LA, ME, MA, MD, MI, MO, MN, MS, MT, NE, NH, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, VT, VA, WV, WI, WY.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts.	Capture, handle, mist-net, band, attach radio transmitters, release.	Renew.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
PER0011986	Lindsey Jakovljevic, Kirtland, OH.	Clubshell (<i>Pleurobema clava</i>), fanshell (<i>Cyprogenia stegaria</i>), fat pocketbook (<i>Potamilus capax</i>), Higgins' eye pearlymussel (<i>Lampsilis higginsii</i>), Neosho mucket (<i>Lampsilis rafinesqueana</i>), northern riffleshell (<i>Epioblasma torulosa rangiana</i>), orangefoot pimpleback (pearlymussel) (<i>Plethobasus cooperianus</i>), pink mucket (pearlymussel) (<i>Lampsilis abrupta</i>), purple cat's paw (<i>Epioblasma obliquata obliquata</i>), rabbitsfoot (<i>Quadrula cylindrica cylindrica</i>), rayed bean (<i>Villosa fabalis</i>), ring pink (<i>Obovaria retusa</i>), rough pigtoe (<i>Pleurobema plenum</i>), scaleshell (<i>Leptodea leptodon</i>), sheepnose (<i>Plethobasus cyphus</i>), snuffbox (<i>Epioblasma triquetra</i>), speckled pocketbook (<i>Lampsilis strecken</i>), spectaclecase (<i>Cumberlandia monodonta</i>), winged mapleleaf (<i>Quadrula fragosa</i>), white cat's paw (<i>Epioblasma obliquata perobliqua</i>).	AL, AK, IA, IL, IN, KS, KY, MI, MN, MO, MS, NJ, NY, OH, OK, PA, TN, WI, WV.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts.	Capture, handle, observe, release, survey.	New.
PER0013263	Marion Wells, Springboro, OH.	Clubshell (<i>Pleurobema clava</i>), Curtis pearlymussel (<i>Epioblasma florentina curtisii</i>), fanshell (<i>Cyprogenia stegaria</i>), fat pocketbook (<i>Potamilus capax</i>), Neosho mucket (<i>Lampsilis rafinesqueana</i>), northern riffleshell (<i>Epioblasma torulosa rangiana</i>), pink mucket (pearlymussel) (<i>Lampsilis abrupta</i>), purple cat's paw (<i>Epioblasma obliquata obliquata</i>), rabbitsfoot (<i>Quadrula cylindrica cylindrica</i>), rayed bean (<i>Villosa fabalis</i>), scaleshell (<i>Leptodea leptodon</i>), sheepnose (<i>Plethobasus cyphus</i>), snuffbox (<i>Epioblasma triquetra</i>), spectaclecase (<i>Cumberlandia monodonta</i>), winged mapleleaf (<i>Quadrula fragosa</i>), white cat's paw (<i>Epioblasma obliquata perobliqua</i>).	OH, MO	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts.	Capture, handle, observe, release, survey.	Renew.
PER0015171	Cory Suski, Urbana, IL.	Higgins' eye pearlymussel (<i>Lampsilis higginsii</i>).	IL	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts, conduct research.	Collect, handle, hold, kill, release.	New.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your

comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public

review, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be

made available for public disclosure in their entirety.

Next Steps

If we decide to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Lori Nordstrom,

Assistant Regional Director, Ecological Services.

[FR Doc. 2021-17664 Filed 8-17-21; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[212 LLOR930000 L16100000.DF0000]

Notice of Availability of the Legal Description and Maps Depicting Oregon and California Railroad Revested Lands, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the Western Oregon Tribal Fairness Act, the Bureau of Land Management (BLM) is providing notice of the availability of the legal description and maps depicting Oregon and California Railroad Revested (O&C) lands in western Oregon that were conveyed to two tribes in 2018, and other public domain lands in western Oregon that were reclassified as O&C lands in 2020.

ADDRESSES: The maps are available for public inspection electronically at <https://eplanning.blm.gov/eplanning-ui/project/121073/570>.

FOR FURTHER INFORMATION CONTACT: Paul Tigan, Field Manager, Bureau of Land Management, Northwest Oregon District, 1717 Fabry Road SE, Salem, Oregon, 97306; telephone: 971-600-7366; email: pdigtan@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 Mr. Tigan. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: As required by the Western Oregon Tribal Fairness Act (Pub. L. 115-103) (WOTFA), the BLM reclassified public

domain lands under its administration in western Oregon as O&C lands (43 U.S.C. 2601 *et seq.*). Section 102 of the WOTFA conveyed BLM-administered lands to the Cow Creek Band of the Umpqua Tribe of Indians and Section 202 of the WOTFA conveyed BLM-administered lands to the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians. Sections 105 and 205 of the WOTFA required the BLM to reclassify public domain lands as O&C lands in approximately equal acreage and condition as the conveyed O&C lands. In accordance with sections 105(c) and 205(c) of the WOTFA, the BLM has prepared maps depicting the conveyed lands. Also, in accordance with sections 105(c) and 205(c) of the WOTFA, the BLM has prepared maps depicting the reclassified lands.

As required by the WOTFA, the BLM provided opportunity for public comment prior to finalizing the identification of the reclassified lands. Public comment opportunities included a 30-day public scoping period and a 30-day public comment period on the environmental assessment developed by the BLM to assess alternatives for potential lands for reclassification.

The maps described herein have been submitted to Congress and are available for public inspection (see **ADDRESSES**).

(Authority: P.L. 115-103, 131 STAT. 2253)

Barry R. Bushue,

BLM Oregon/Washington State Director.

[FR Doc. 2021-17663 Filed 8-17-21; 8:45 am]

BILLING CODE 4310-33-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVW03500 12320000.MA0000 19X WBS CODE: LVRDNDV190000.241A.21XL5017AP MO# 4500154486]

Temporary Restrictions of Specific Uses on Public Lands Within the Black Rock Desert—High Rock Canyon Emigrant Trails National Conservation Area (Black Rock Desert Playa) Humboldt County, Pershing County, and Washoe County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary restrictions.

SUMMARY: Under the authority of the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) Winnemucca District, Black Rock Field Office, will implement temporary restrictions to protect public safety and resources on public lands both within

and adjacent to the Black Rock Desert playa.

DATES: The temporary restrictions will apply from August 18, 2021, to 11:59 p.m. on October 31, 2021.

FOR FURTHER INFORMATION CONTACT:

Mark E. Hall, Field Manager, BLM Black Rock Field Office, Winnemucca District, 5100 East Winnemucca Boulevard, Winnemucca, NV 89445-2921; telephone: 775-623-1500; email: mehall@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 hours.

SUPPLEMENTARY INFORMATION: The temporary restrictions affect public lands both within and adjacent to the Black Rock Desert playa within the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area in Humboldt, Pershing, and Washoe Counties, Nevada. The temporary restrictions on public lands will be conducted to limit impacts to the natural resource and provide for public health and safety.

The restricted area of the affected public lands falls within the following described area:

Mount Diablo Meridian, Nevada

- T. 32 N., R. 23 E.,
Secs. 1 thru 3, secs. 10 thru 14, and secs. 23 thru 26.
- T. 33 N., R. 23 E.,
Secs. 24 thru 26 and secs. 34 thru 36.
- T. 32 N., R. 24 E.,
Secs. 5 thru 7 and sec. 18.
- T. 33 N., R. 24 E.,
Secs. 1 thru 5, secs. 7 thru 23, and secs. 27 thru 33.
- T. 33½ N., R. 24 E.,
Secs. 25 thru 29 and secs. 33 thru 36.
- T. 34 N., R. 24 E.,
Secs. 1 and 2, secs. 10 thru 15, secs. 21 thru 28, secs. 32 thru 36.
- T. 35 N., R. 24 E.,
Sec. 13, secs. 23 thru 26, and secs. 35 and 36.
- T. 33 N., R. 25 E.,
Secs. 1 thru 4, secs. 9 and 10, and sec. 16.
- T. 34 N., R. 25 E.
- T. 35 N., R. 25 E.
- T. 35½ N., R. 25 E.,
Secs. 25 thru 27 and secs. 33 thru 36.
- T. 36 N., R. 25 E.,
Sec. 13, secs. 21 thru 29, and secs. 32 thru 36.
- T. 34 N., R. 26 E.,
Secs. 1 thru 11, secs. 15 thru 22, and secs. 28 thru 33.
- T. 35 N., R. 26 E.
- T. 35½ N., R. 26 E.
- T. 36 N., R. 26 E.,

Sec. 7, secs. 17 thru 20, and secs. 28 thru 33.

T. 35 N., R. 27 E.,

Secs. 6, 7, 18, 19, 30, and 31.

The restriction area, (129,173 acres) includes the entire Black Rock Desert playa. The temporary restrictions will apply from August 18, 2021 until 11:59 p.m. on October 31, 2021.

The temporary restrictions are necessary because the BLM anticipates increased visitation and use of the Black Rock Desert playa. The proposed Burning Man event was cancelled by the permit applicant for the second year in a row. The Burning Man event historically has attracted up to 80,000 participants to what has been traditionally called Black Rock City, Nevada. As a result, many members of the public who had planned on attending that event have instead expressed an interest in informal gatherings on the playa throughout the summer of 2021. The BLM has received many inquiries and has reviewed available information online and has determined that use of the playa is likely to be high. These temporary restrictions are necessary to provide a safe environment for members of the public visiting the Black Rock Desert playa as well as special recreation permittees. The temporary restrictions will also protect public land resources by addressing likely impacts associated with increased use of the Black Rock Desert playa. A temporary restriction order, under the authority of 43 CFR 8364.1, is appropriate because the restrictions listed below are specifically tailored to the time frame that is necessary to provide a safe environment for the public and to protect public land resources while avoiding imposing restrictions that may not be necessary in the area during the remainder of the year.

The BLM will post copies of these temporary restrictions and an associated map in kiosks at access points to the Black Rock Desert playa as well as at the Gerlach Post Office, Bruno's Restaurant, Empire Store, Friends of Black Rock-High Rock offices, the BLM-Nevada Black Rock Station near Gerlach, and the BLM-California Applegate Field Office. The BLM will also make the materials available on the BLM external web page at: <http://www.blm.gov>.

In addition to the Nevada Collateral Forfeiture and Bail Schedule as authorized by the United States District Court, District of Nevada and under the authority of Section 303(a) of FLPMA, 43 CFR 8360.0-7 and 43 CFR 8364.1, the BLM will apply and enforce the following temporary restrictions within the Black Rock Desert playa from

August 18, 2021, through October 31, 2021:

Temporary Restrictions

1. Commercial activities, as defined at 43 CFR 2932.5, are prohibited.

2. Camping use is limited to the flat and un-vegetated playa surface.

3. Building of structures is prohibited. A structure is defined as construction, placement or organization of parts, pieces, or objects that are not intended for sleeping, cooking, or protection from the elements, such as shade tents.

4. Ignition of fires other than a campfire is prohibited, unless specified by a fire prevention order. Campfires may only be burned in containers that are sturdily elevated six (6) inches above the playa surface and in a manner that does not pose a risk of fire debris falling onto the playa surface. Plastic and nonflammable materials may not be burned in campfires. Burning of construction materials, pallets, or wood with screws or nails is prohibited.

5. Possessing, discharging, using or allowing the use of fireworks, pyrotechnic or incendiary devices is prohibited.

6. Possessing, shooting, or causing to burn; explosives or explosive material, to include binary explosive targets is prohibited.

7. The discharge and dumping of grey water or black water onto the playa/ground surface is prohibited. Grey water is defined as water that has been used for cooking, washing, dishwashing, or bathing and/or contains soap, detergent, or food scraps/residue, regardless of whether such products are biodegradable or have been filtered or disinfected. Black water is defined as wastewater containing feces, urine and/or flush water.

8. Depositing human waste (liquid and/or solid) on the playa/ground surface is prohibited.

9. Dumping or discharge of vehicle oil, petroleum products or other hazardous household, commercial or industrial refuse or waste onto the playa surface is prohibited. This applies to all recreational vehicles, trailers, motorhomes, port-a-potties, generators and other camp infrastructure.

10. Storage of over 20 gallons of fuel must include secondary containment capable of holding and preventing leaks and spills on the playa surface. Storage of less than 20 gallons must include a spill pad or other measures to prevent leaks and spills. Secondary containment is defined as capturing the entire contents of the largest tank in the containment area in the event of a leak or spill.

11. Unauthorized dumping or discharge of fresh water onto the playa surface in a manner that creates a hazard or nuisance is prohibited.

12. Aircraft landing, taking off, touch-and-go landings, and taxiing is prohibited. Aircraft is defined in Title 18, U.S.C., section 31(a)(1) and includes lighter-than-aircraft and ultra-light craft. However, in an emergency, fixed wing aircraft and helicopters that are providing emergency medical services are not prohibited.

13. Possession of an open container of an alcoholic beverage by the driver or operator of any motorized vehicle, whether or not the vehicle is in motion, is prohibited. An open container is defined as any bottle, can, or other container which contains an alcoholic beverage, if that container does not have a closed top or lid for which the seal has not been broken. If the container has been opened one or more times, and the lid or top has been replaced, that container is an open container. The possession of an open container includes any open container that is physically possessed by the driver or operator or is adjacent to and reachable by that driver or operator. This includes, but is not limited to, containers in a cup holder or rack adjacent to the driver or operator, containers on a vehicle floor next to the driver or operator, and containers on a seat or console area next to a driver or operator.

14. All motor vehicles must comply with the following requirements:

A. The operator of a motor vehicle must possess a valid driver's license.

B. Motor vehicles and trailers must possess evidence of valid registration.

C. It is prohibited to ride on the top of or outside of the passenger compartment (the area intended for sitting inside a vehicle).

D. Motor vehicles, other than a motorcycle or golf cart, must be equipped with at least two working headlamps and at least two functioning red tail lamps. Motorcycles or golf carts require only one working headlamp and one working red taillight during night hours, from a half-hour after sunset to a half-hour before sunrise. Trailers pulled by motor vehicles must be equipped with at least two functioning tail lamps and at least two functioning brake lights.

E. Motor vehicles, including motorcycles or golf carts, must display a red, amber, or yellow brake light visible to the rear in normal sunlight upon application of the brake.

F. Except for the flat and un-vegetated playa surface, all vehicle use is limited to designated vehicle routes (roads and ways).

G. Motor vehicle is defined as any device designed for and capable of travel over land and which is self-propelled by a motor.

H. Trailer means every vehicle without motor power designed to carry property or passengers wholly on its own structure and to be drawn by a motor vehicle, this includes camp trailers, pop-up trailers, 4' x 7' or larger flatbed trailers, enclosed cargo trailers, or RV style trailers.

15. The possession and or use of lasers is prohibited. A laser means any laser beam device or demonstration laser product that emits a single point of light amplified by the stimulated emission of radiation that is visible to the human eye.

16. The use or discharge of flame effects is prohibited. Flame effect is defined as the combustion of solids, liquids, or gases to produce thermal, physical, visual, or audible phenomena. This includes all flames that are automated, switched, pressurized or having any other action than simply being lit on fire; as well as projects using propane or other liquid or gaseous fuels.

Enforcement: Any person who violates any of these temporary restrictions may be tried before a United States Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 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 Nevada law.

Authority: 43 CFR 8364.1.

Mark Hall,

*Field Manager, Black Rock Field Office,
Winnemucca District.*

[FR Doc. 2021-17736 Filed 8-17-21; 8:45 am]

BILLING CODE 4310-HC-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[212 LLUTY01000 L12200000.MA0000]

Notice of Proposed Supplementary Rules for the Klondike Bluffs Area of Public Lands Managed by the Moab Field Office in Grand County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed supplementary rules.

SUMMARY: These proposed supplementary rules would limit camping to developed campgrounds and designated campsites within the

Klondike Bluffs Mountain Bike Focus Area and a nearby isolated 160-acre Bureau of Land Management (BLM) parcel. The rules would require the use of portable toilets at designated campsites where constructed toilets are not provided. Additionally, the proposed supplementary rules would prohibit wood cutting and collecting in the Klondike Bluffs Mountain Bike Focus Area and the nearby 160-acre parcel.

DATES: Comments on the proposed supplementary rules must be received or postmarked by October 18, 2021.

ADDRESSES: Comments may be submitted by mail, hand delivery, or email to the BLM Moab Field Office, Attention: Katie Stevens, 82 East Dogwood Avenue, Moab, UT 84532, or kstevens@blm.gov. The proposed supplementary rules and accompanying environmental documents are available for inspection at the BLM Moab Field Office at the address listed above and on the ePlanning website at: <https://eplanning.blm.gov/eplanning-ui/project/117076/510>. To access this link, please copy it into any browser other than internet Explorer.

FOR FURTHER INFORMATION CONTACT: Jennifer Jones, Assistant Field Manager for Recreation, BLM Moab Field Office, 82 East Dogwood Avenue, Moab, UT 84532, (435) 259-2100, or blm_ut_mb_mail@blm.gov. Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1-800-877-8339 to leave a message or question for the above individual. The FRS is available 24 hours a day, 7 days a week. Replies are provided during normal business hours.

SUPPLEMENTARY INFORMATION:

- I. Public Comment Procedures
- II. Background
- III. Discussion
- IV. Procedural Matters
- V. Proposed Supplementary Rules for the BLM Moab Field Office

I. Public Comment Procedures

Written comments on the proposed supplementary rules must be sent in accordance with the information outlined in the **DATES** and **ADDRESSES** sections of this notice. The BLM is not obligated to consider comments received after the close of the comment period (see **DATES**) unless they are postmarked or electronically dated before the deadline. The BLM is not obligated to consider comments delivered to an address other than that listed above in **ADDRESSES**. Comments should be specific, confined to issues pertinent to the proposed supplementary rules, and should

explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposed rule the comment is addressing.

Comments, including names, addresses, and other contact information of respondents, will be available for public review at the BLM Moab Field Office, 82 East Dogwood Avenue, Moab, UT 84532, during regular business hours (7:45 a.m.–4:30 p.m., Monday through Friday, except Federal holidays). 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 BLM in your comment to withhold your personal identifying information from public review, we cannot guarantee we will be able to do so.

II. Background

In September 2019, the BLM issued a Decision Record on an Environmental Assessment (EA) to limit camping to designated sites and developed campgrounds in the Klondike Bluffs Mountain Bike Focus Area and a nearby isolated 160-acre parcel of BLM-administered land that is completely surrounded by lands managed by the State of Utah. During the EA process, the BLM identified the need to establish enforceable supplementary rules concerning camping at these locations.

The BLM has documented significant increases in visitation numbers and resulting pressures on camping areas in the Moab Field Office. Therefore, the BLM has determined these proposed rules are necessary to increase sustainable camping and recreation opportunities, provide for visitor health and safety, prevent undue degradation of natural and cultural non-renewable resources, and promote high-quality outdoor recreation opportunities.

During the 15-day public comment period for the EA, the BLM received 14 comments, of which 13 were in support of the proposal. The proposal was also supported by Grand County, Utah. The Utah Governor's Office of Economic Development commented and offered monetary assistance with building a campground in the Klondike Bluffs area to enhance the quality of the world-class recreation opportunities.

III. Discussion

The BLM Moab Field Office

The BLM Moab Field Office has jurisdiction from the Grand County line to the north, the Utah-Colorado State line to the east, Harts Draw and Lisbon Valley to the south, and the Green River to the west. The public lands managed by the Moab Field Office are a domestic and international tourist destination hosting three million visitors per year. The Moab Field Office manages 45 developed campgrounds.

The proposed supplementary rules are critical for continuing to provide sustainable camping opportunities, public health and safety, reducing visitor conflicts, and protecting natural and cultural resources on public lands. The supplementary rules already in place have been effective in providing for visitor health and safety and protecting cultural and natural resources while improving the visitor experience. The proposed rules would supplement existing rules by providing protection to an additional high visitation area managed by the Moab Field Office.

The proposed rules regarding camping, human waste, and wood gathering would cover the Klondike Bluffs Mountain Bike Focus Area and a nearby 160-acre public land parcel (for a total of 14,786 acres) that has become increasingly popular as the Klondike Bluffs Mountain Bike Trail System has been developed. The restrictions are directly related to the degradation of natural resources, health and safety issues posed by the presence of human waste, and unsustainable levels of high-density camping use where no facilities exist to mitigate visitor impacts.

The reasoning for each rule is addressed below.

1. Proposed rule: *You must camp at a designated site.*

This proposed rule would apply to the Klondike Bluffs Mountain Bike Focus Area and a nearby 160-acre parcel where dispersed camping is degrading natural, visual, and wildlife resources while causing risks to human health. The affected area, which is enumerated in the Proposed Supplementary Rules section, reflects the recreation management decision (REC-6) in the 2008 Moab Resource Management Plan (RMP) to limit dispersed camping as visitation impacts and environmental conditions warrant.

2. Proposed rule: *You must use a constructed toilet or possess, set up for usage, and use a portable toilet to dispose of solid human waste.* Exposure to human waste is a health risk to the public and BLM personnel. The

continuous deposition of human waste on or just beneath the surface of the ground—which is largely sand and bare rock in the Moab region—is a risk that is not naturally mitigated. These risks are amplified in high-visitation areas and must be mitigated by specifying the methods of disposal. This rule would apply to the Klondike Bluffs Mountain Bike Focus Area and the nearby 160-acre parcel because the area experiences a very high level of visitation.

3. Proposed rule: *You must not cut, gather, or collect wood.*

Wood gathering depletes an already sparse supply of woody vegetation that is not readily replaced in the desert environment. As with camping and human waste, the Klondike Bluffs Area is at a greater risk of resource damage and depletion due to high visitation. In order to ensure that future visitors can enjoy the visual resources, and to protect the sensitive desert ecology, wood cutting, gathering, and collecting in the Klondike Bluffs area would be prohibited.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These proposed supplementary rules are not significant regulatory actions and are not subject to review by the Office of Management and Budget under Executive Order 12866. These proposed supplementary rules would not have an annual effect of \$100 million or more on the economy. They would not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These proposed supplementary rules would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The proposed supplementary rules would not materially alter the budgetary effects of entitlements, grants, user fees, loan programs, or the rights or obligations of their recipients; nor does it raise novel legal or policy issues. These supplementary rules merely establish rules of conduct for public use on a limited area of public lands.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. The BLM invites comments on how to make this supplementary rule easier to understand, including answers to questions such as the following:

1. Are the requirements in the supplementary rule clearly stated?

2. Does the supplementary rule contain technical language or jargon that interferes with their clarity?

3. Does the format of the supplementary rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce clarity?

4. Is the description of the supplementary rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the supplementary rule? How could this description be more helpful in making the supplementary rule easier to understand?

Please send any comments on the clarity of the rule to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

These proposed supplementary rules are consistent with and necessary to properly implement decisions proposed, analyzed, and approved in EA #DOI-BLM-UT-Y010-2019-0021-EA. They would establish rules of camping conduct for public use of public lands managed by the Moab Field Office in order to protect public health, safety and natural and cultural resources. The approved EA is available for review at the physical and on-line locations identified in the **ADDRESSES** section.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended (5 U.S.C. 601–612) to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These proposed supplementary rules would merely establish rules of conduct for public use on a limited area of public lands. Therefore, the BLM has determined the proposed supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

These proposed supplementary rules are not “major” as defined under 5 U.S.C. 804(2). The proposed supplementary rules would merely establish rules of conduct for public use on a limited area of public lands and would not affect commercial or business activities of any kind.

Unfunded Mandates Reform Act

These proposed supplementary rules would not impose an unfunded mandate on state, local, or tribal

governments in the aggregate, or the private sector of more than \$100 million per year; nor would they have a significant or unique effect on small governments. The proposed supplementary rules would have no effect on governmental or tribal entities and would impose no requirements on any of these entities. The proposed supplementary rules would merely establish rules of conduct for public use on a limited selection of public lands and would not affect tribal, commercial, or business activities of any kind. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

These proposed supplementary rules do not have significant takings implications, nor are they capable of interfering with Constitutionally-protected property rights. The proposed supplementary rules would merely establish rules of conduct for public use for a limited area of public lands and would not affect anyone's property rights. Therefore, the Department of the Interior has determined these proposed supplementary rules would not cause a "taking" of private property or require preparation of a takings assessment under this Executive Order.

Executive Order 13132, Federalism

These proposed supplementary rules would not have a substantial direct effect on the states, the relationship between the Federal Government and the states, nor the distribution of power and responsibilities among the various levels of government. These proposed supplementary rules would not conflict with any state law or regulation. Therefore, in accordance with Executive Order 13132, the BLM has determined these supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined these proposed supplementary rules would not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Tribal Governments

In accordance with Executive Order 13175, the BLM conducted consultation and coordination with tribal governments in the development of the RMP and the EA which form the basis for the proposed rules. Tribal consultation was also undertaken on EA #DOI-BLM-UT-Y010-2019-0021-EA. The two Tribes who responded (the Hopi and the Southern Ute) fully concurred with the proposed action to limit camping to designated sites.

Energy Supply, Distribution, or Use

Under Executive Order 13211, the BLM has determined the proposed supplementary rules would not comprise a significant energy action, and they would not have an adverse effect on energy supplies, production, or consumption.

Paperwork Reduction Act

These supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* Federal criminal investigations or prosecutions may result from these rules, and the collection of information for these purposes is exempt from the Paperwork Reduction Act, 44 U.S.C. 3518(c)(1).

Author

The principal author of these supplementary rules is Kathleen Stevens, Outdoor Recreation Planner, BLM Moab Field Office, 82 East Dogwood Avenue, Moab, UT 84532.

V. Proposed Supplementary Rules for the BLM Moab Field Office

For the reasons stated in the preamble, and under the authorities for supplementary rules found at 43 U.S.C. 1740, and 43 CFR 8365.1-6, the BLM Utah State Director is proposing the following supplementary rules:

Definitions

The following definitions apply to the supplementary rules

Camping: The erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, parking of a motor vehicle, motor home or trailer, or mooring of a vessel, for the apparent purpose of overnight occupancy while engaged in recreational activities such as hiking, hunting, fishing, bicycling, sightseeing, off-road vehicle activities, or other generally recognized forms of recreation.

Klondike Bluffs Mountain Bike Focus Area: Public land located east of U.S. Highway 191, west of Arches National Park, north of the Dalton Wells Road and south of the block of state land near Interstate 70. A map of the area can be viewed at the Moab Field Office or in the Klondike Bluffs EA.

Portable Toilet: (1) A containerized and reusable system; (2) A commercially available biodegradable system that is landfill disposable (e.g., Rest Stop, Go-Anywhere Toilet Kit or "WAG bag"); or (3) A washable, reusable toilet within a camper, trailer or motor home.

The following rules apply to the Klondike Bluffs Mountain Bike Focus Area and a nearby 160-acre parcel:

- (1) You must camp at a designated site.
- (2) You must not dispose of human waste in any other container than a portable or constructed toilet.
- (3) You must not cut, gather, or collect wood.

Penalties

Under Section 303(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1733(a) and 43 CFR 8360.0-7, any person who violates any of these supplementary rules on public lands within Utah may be tried before a United States Magistrate and fined no more than \$1,000, imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Exemptions

Any Federal, State, local, or military persons acting within the scope of their duties; and members of an organized rescue or firefighting force in performance of an official duty.

Gregory Sheehan,

Bureau of Land Management, State Director, Utah.

[FR Doc. 2021-17704 Filed 8-17-21; 8:45 am]

BILLING CODE 4310-DQ-P

DEPARTMENT OF THE INTERIOR**Office of Surface Mining Reclamation and Enforcement**

[S1D1S SS08011000 SX064A000
211S180110; S2D2S SS08011000
SX064A000 21XS501520; OMB Control
Number 1029-0025]

**Agency Information Collection
Activities; Maintenance of State
Programs and Procedures for
Substituting Federal Enforcement of
State Programs and Withdrawing
Approval of State Programs**

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

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before September 17, 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. Please provide a copy of your comments to Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Room 4556-MIB, Washington, DC 20240, or by email to mgehlhar@osmre.gov. Please reference OMB Control Number 1029-0025 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mark Gehlhar by email at mgehlhar@osmre.gov, or by telephone at (202) 208-2716. You may also view the ICR at <http://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public’s reporting burden. It also helps the public understand our information

collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on May 11, 2021 (86 FR 25884). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The regulation allows any interested person to request the Director of OSMRE evaluate a state program by setting forth in the request a concise statement of facts that the person believes establishes the need for the evaluation.

Title of Collection: Maintenance of State Programs and Procedures for Substituting Federal Enforcement of State Programs and Withdrawing Approval of State Programs.

OMB Control Number: 1029-0025.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Businesses and state governments.

Total Estimated Number of Annual Respondents: 1.

Total Estimated Number of Annual Responses: 1.

Estimated Completion Time per Response: Varies from 20 hour to 100 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 50.

Respondent’s Obligation: Required to obtain or retain a benefit.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: \$0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Mark J. Gehlhar,

*Information Collection Clearance Officer,
Division of Regulatory Support.*

[FR Doc. 2021-17703 Filed 8-17-21; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF THE INTERIOR**Office of Surface Mining Reclamation and Enforcement**

[S1D1S SS08011000 SX064A000
211S180110; S2D2S SS08011000
SX064A000 21XS501520; OMB Control
Number 1029-0035]

**Agency Information Collection
Activities; Surface and Underground
Mining Permit Applications—Minimum
Requirements for Information on
Environmental Resources**

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

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before September 17, 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. Please provide a copy of your comments to Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Room 4556–MIB, Washington, DC 20240, or by email to mgehlhar@osmre.gov. Please reference OMB Control Number 1029–0035 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mark Gehlhar by email at mgehlhar@osmre.gov, or by telephone at (202) 208–2716. You may also view the ICR at <http://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public’s reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on May 3, 2021 (86 FR 23427). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of

public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Applicants for surface and underground coal mining permits are required to provide adequate descriptions of the environmental resources that may be affected by proposed mining activities. The information will be used by the regulatory authority to determine if the applicant can comply with environmental protection performance standards.

Title of Collection: Surface and Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources.

OMB Control Number: 1029–0035.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State governments and businesses.

Total Estimated Number of Annual Respondents: 149.

Total Estimated Number of Annual Responses: 1,225.

Estimated Completion Time per Response: Varies from one hour to 415 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 108,855.

Respondent’s Obligation: Required to obtain or retain a benefit.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: \$0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Mark J. Gehlhar,

*Information Collection Clearance Officer,
Division of Regulatory Support.*

[FR Doc. 2021–17702 Filed 8–17–21; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000
211S180110; S2D2S SS08011000
SX064A000 21XS501520; OMB Control
Number 1029–0119]

Agency Information Collection Activities; Contractor Eligibility and the Abandoned Mine Land Contractor Information Form

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

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before September 17, 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. Please provide a copy of your comments to Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Room 4556–MIB, Washington, DC 20240, or by email to mgehlhar@osmre.gov. Please reference OMB Control Number 1029–0119 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mark Gehlhar by email at mgehlhar@osmre.gov, or by telephone at (202) 208–2716. You may also view the ICR at <http://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public’s reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on May 11, 2021 (86 FR 25884). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: 30 CFR 874.16 requires that every successful bidder for an AML contract must be eligible under 30 CFR 773.15(b)(1) at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations. Further, the regulation requires the eligibility to be confirmed by OSMRE's automated Applicant/Violator System (AVS) and the contractor must be eligible under the regulations implementing Section 510(c) of the Surface Mining Control and Reclamation Act to receive permits to conduct mining operations. This form provides a tool for OSMRE and the States/Indian tribes to help them prevent persons with outstanding violations from conducting further

mining or AML reclamation activities in the State.

Title of Collection: Contractor Eligibility and the Abandoned Mine Land Contractor Information Form.

OMB Control Number: 1029-0119.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State governments and businesses.

Total Estimated Number of Annual Respondents: 188.

Total Estimated Number of Annual Responses: 188.

Estimated Completion Time per Response: Varies from 30 minutes to 1 hour, depending on activity.

Total Estimated Number of Annual Burden Hours: 96.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: \$0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Mark J. Gehlhar,

*Information Collection Clearance Officer,
Division of Regulatory Support.*

[FR Doc. 2021-17710 Filed 8-17-21; 8:45 am]

BILLING CODE 4310-05-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-1047 (Third Review)]

Ironing Tables and Certain Parts Thereof From China

Determination

On the basis of the record¹ developed in the subject five-year review, the United States International Trade Commission ("Commission") determines, pursuant to the Tariff Act of 1930 ("the Act"), that revocation of the antidumping duty order on ironing tables and certain parts thereof from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

¹ The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Background

The Commission instituted this review on February 1, 2021 (86 FR 7737) and determined on May 7, 2021 that it would conduct an expedited review (86 FR 36771, July 13, 2021).

The Commission made this determination pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determination in this review on August 13, 2021. The views of the Commission are contained in USITC Publication 5221 (August 2021), entitled *Ironing Tables and Certain Parts Thereof from China: Investigation No. 731-TA-1047 (Third Review)*.

By order of the Commission.

Issued: August 13, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021-17741 Filed 8-17-21; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1276]

Certain Light-Based Physiological Measurement Devices and Components Thereof Institution of Investigation

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 Masimo Corporation of Irvine, California and Cercacor Laboratories, Inc. of Irvine, California. An amended complaint was filed on July 12, 2021. A supplement was filed on July 19, 2021. The complaint, as amended, 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 light-based physiological measurement devices and components thereof by reason of infringement of certain claims of U.S. Patent No. 10,912,501 ("the '501 patent"); U.S. Patent No. 10,912,502 ("the '502 patent"); U.S. Patent 10,945,648 ("the '648 patent"); U.S. Patent No. 10,687,745 ("the '745 patent"); and U.S. Patent No. 7,761,127 ("the '127 patent"). The amended complaint further alleges that an industry in the United States exists and/or is in the process of being established 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 a cease and desist order.

ADDRESSES: The complaint, as amended, 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: Katherine Hiner, Office of Docket Services, U.S. International Trade Commission, telephone (202) 205-1802.

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 August 13, 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 1-9 and 11-30 of the '501 patent; claims 1-2, 4-6, 8-12, 14-22, 24-26, and 28-30 of the '502 patent; claims 1-17 and 19-30 of the '648 patent; claims 1-6, 8-9, 11, 14, 20-24, and 26-27 of the '745 patent; and claims 7-9 of the '127 patent; and whether an industry in the United States exists and/or is in the process of being established 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 CFR 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 "wearable electronic

devices with light-based pulse oximetry functionality and components thereof";

(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:
Masimo Corporation, 52 Discovery, Irvine, CA 92618
Cercacor Laboratories, Inc., 15750 Alton Pkwy., Irvine, CA 92618

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served:
Apple Inc., One Apple Park Way, Cupertino, CA 95014.

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

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: August 13, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021-17743 Filed 8-17-21; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB 1140-0050]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Revision of a Currently Approved Collection; Identification Markings Placed on Firearms

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will submit 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. The proposed information collection (IC) OMB 1140-0050 (Identification Markings Placed on Firearms) is being revised due to an increase in the number of respondents, although there is a reduction in the total responses and total burden hours since the last renewal in 2018. The proposed information collection (IC) is also being published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until October 18, 2021.

FOR FURTHER INFORMATION CONTACT: If you have additional comments regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact: Jennifer Scott, Firearms Industry Programs Branch, either by mail at 99 New York Ave. NE, Washington, DC 20226 by email at fipb-informationcollection@atf.gov, or by telephone at 202-648-7190.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. 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;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

1. Type of Information Collection (check justification or form 83):

Revision of a currently approved collection.

2. The Title of the Form/Collection: Identification Markings Placed on Firearms.

3. The agency form number, if any, and the applicable component of the Department sponsoring the collection: Form number (if applicable): None.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: Business or other for-profit.

Other (if applicable): None.

Abstract: This information collection requires licensed firearms manufacturers and importers to legibly identify each firearm by engraving, casting, stamping (impressing), or otherwise conspicuously placing an individual serial number on the frame or receiver of a firearm. The required firearms identification information supports Federal, State, and local law enforcement officials in crime fighting by facilitating the tracing of firearms used in criminal activities.

5. An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: An estimated 17,930 respondents will use this collection annually, and it will take each respondent approximately 1 minute to complete each response.

6. An estimate of the total public burden (in hours) associated with the collection: The estimated annual public burden associated with this collection is 66,446 hours, which is equal to 17,930 (total respondents) * 222.3495 (total responses per respondent) * 0.0166667

(1 minute or time taken for each response).

7. An Explanation of the Change in Estimates: Although there is an increase in the total respondents from 13,868 in 2018, to 17,930 in 2021, there is a reduction in both the total responses and burden hours from 5,137,771 to 3,986,663 and 85,630 to 66,446 hours respectively, due to fewer imported firearms. Consequently, the total cost burden for this collection also reduced from \$4,726,749 in 2018, to \$3,667,730 in 2021.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Mail Stop 3E.405A, Washington, DC 20530.

Dated: August 13, 2021.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2021-17727 Filed 8-17-21; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB 1140-0062]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Extension Without Change of a Currently Approved Collection; Identification of Imported Explosives Materials

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will submit 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. The proposed information collection (IC) is also being published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until October 18, 2021.

FOR FURTHER INFORMATION CONTACT: If you have additional comments regarding the estimated public burden or associated response time, suggestions, or need a copy of the

proposed information collection instrument with instructions, or additional information, please contact: Anita Scheddel, Firearms and Explosives Industry Division, Explosives Industry Programs Branch, either by mail at 99 New York Ave, NE, Mailstop 6N-518, Washington, DC 20226, by email at eipbinformationcollection@atf.gov, or by telephone at 202-648-7120.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. 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;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

1. Type of Information Collection (check justification or form 83):

Extension without change of a currently approved collection.

2. The Title of the Form/Collection: Identification of Imported Explosives Materials.

3. The agency form number, if any, and the applicable component of the Department sponsoring the collection: Form number (if applicable): None.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: Business or other for-profit.

Other (if applicable): None.

Abstract: This information collection ensures that explosive materials can be effectively traced by requiring all licensed importers to identify by

marking all explosive materials they import for sale or distribution.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 17 respondents will take approximately one hour to respond three times per year to this collection.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 51 hours, which is equal to 17 (total respondents) * 3 (total # of responses annually) * 1 hour (total time to prepare each response).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Mail Stop 3E.405A, Washington, DC 20530.

Dated: August 13, 2021.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2021-17726 Filed 8-17-21; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121-0218]

Agency Information Collection Activities; Proposed eCollection Comments Requested; Revision of a Previously Approved Collection; Census of Juveniles in Residential Placement (CJRP)

AGENCY: Office of Justice Programs, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until September 17, 2021.

ADDRESSES: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Benjamin Adams, Social Science Analyst, National Institute of Justice,

810 Seventh Street NW, Washington, DC 20531 (email: benjamin.adams@usdoj.gov; telephone: 202-616-3687).

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 shall have practical utility;
- Evaluate whether the accuracy of the agency's estimate of the burden on the proposed collection of information, including the validity of the methodology and assumptions that were used;
- Evaluate whether and if so how the quality, utility, and clarity of the information collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including 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. *The Title of the Form/Collection:* Census of Juveniles in Residential Placement.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is CJ-14, Office of Justice Programs, United States Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Federal Government, State, Local or Tribal. Other: Not-for-profit institutions; Business or other for-profit. *Abstract:* The Census of Juveniles in Residential Placement (CJRP), which is administered biennially, collects

information from all secure and nonsecure residential placement facilities that house juvenile offenders, defined as persons younger than age 21 who are held in a residential setting as a result of some contact with the justice system. This encompasses both status offenses and delinquency offenses, and includes youth who are either temporarily detained by the court or committed after adjudication for an offense. In addition, the CJRP will request information on the facility response to the coronavirus disease (COVID-19), including: the number of tests administered and confirmed cases among young persons and staff, the use of medical isolation/quarantine, and the number of young persons vaccinated. The information gathered in the national collection will be used in published reports and statistics. The reports will be made available to the U.S. Congress, Executive Office of the President, practitioners, researchers, students, the media, others interested in juvenile offenders, and the general public via the OJP agency websites.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 2,024 respondents will complete questionnaire in an average of 3 hours and 17 minutes per respondent.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 6,640 total burden hours associated with the collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: August 12, 2021.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2021-17656 Filed 8-17-21; 8:45 am]

BILLING CODE 4410-18-P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

NATIONAL SCIENCE FOUNDATION

Request for Information (RFI) on an Implementation Plan for a National Artificial Intelligence Research Resource

AGENCY: White House Office of Science and Technology Policy and National Science Foundation.

ACTION: Request for information and comment; Extension of comment period.

SUMMARY: On July 23, 2021, the Office of Science and Technology Policy (OSTP) and the National Science Foundation (NSF) published in the **Federal Register** a document entitled “Request for Information (RFI) on an Implementation Plan for a National Artificial Intelligence Research Resource” and invited comments to inform the work of the National Artificial Intelligence Research Resource (NAIRR) Task Force (“Task Force”). The Task Force has been directed by Congress to develop an implementation roadmap for a shared research infrastructure that would provide Artificial Intelligence (AI) researchers and students across scientific disciplines with access to computational resources, high-quality data, educational tools, and user support. In response to requests by prospective commenters that they would benefit from additional time to adequately consider and respond to the RFI, OSTP and NSF have determined that an extension of the comment period until October 1, 2021, is appropriate.

DATES: The end of the comment period for the document entitled “Request for Information (RFI) on an Implementation Plan for a National Artificial Intelligence Research Resource,” published on July 23, 2021 (86 FR 39081), is extended from September 1, 2021, until October 1, 2021.

ADDRESSES: Comments submitted in response to 86 FR 39081 may be sent by any of the following methods:

- *Email:* NAIRR-responses@nitr.gov. Email submissions should be machine-readable and not be copy-protected. Submissions should include “*RFI Response: National AI Research Resource*” in the subject line of the message.

- *Mail:* Attn: Wendy Wigen, NCO, 2415 Eisenhower Avenue, Alexandria, VA 22314, USA.

Instructions: Response to this RFI (86 FR 39081) is voluntary. Each individual or institution is requested to submit only one response. Submissions must be in 12 point or larger font, include a page number on each page, and not exceed 10 pages. Responses should include the name of the person(s) or organization(s) filing the comment. Responses should refer to the particular topic number(s) and letter(s), as listed below, to which the comments pertain.

Responses to this RFI (86 FR 39081) may be posted online at www.ai.gov. Therefore, responses must be appropriate for posting publicly without change or redaction, and we request that

no business proprietary information, copyrighted information, or personally identifiable information be submitted in response to this RFI. Please submit your comments using only one method.

FOR FURTHER INFORMATION CONTACT:

Wendy Wigen and NAIRR-responses@nitr.gov, (202) 459-9683. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On July 23, 2021, OSTP and NSF published in the **Federal Register** a document inviting comments on the work of the NAIRR Task Force (86 FR 39081). The Task Force has been directed by Congress to develop an implementation roadmap for a shared research infrastructure that would provide AI researchers and students across scientific disciplines with access to computational resources, high-quality data, educational tools, and user support. The RFI was issued to seek input from a broad array of stakeholders on options, models and priorities to consider for the NAIRR implementation roadmap, as well as how the NAIRR can reinforce principles and practices of ethical and responsible research and development of AI. Comments from the public will be used to inform the Task Force’s development of an implementation roadmap. The document stated that the comment period would close on September 1, 2021. OSTP and NSF have received requests to extend the comment period. An extension of the comment period will provide additional opportunity for the public to consider the RFI and prepare comments to address the questions posed therein. Therefore, OSTP and NSF are extending the end of the comment period for the RFI from September 1, 2021, until October 1, 2021.

Submitted by the National Science Foundation and the White House Office of Science and Technology Policy on August 13, 2021.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

Stacy Murphy,

Operations Manager, White House Office of Science and Technology Policy.

[FR Doc. 2021-17737 Filed 8-17-21; 8:45 am]

BILLING CODE 7555-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2021-0153]

Site Characterization Investigations for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft regulatory guide (DG), DG-1392, “Site Characterization Investigations for Nuclear Power Plants.” It is proposed Revision 3 of Regulatory Guide (RG) 1.132. DG-1392 proposes guidance on field investigations for determining the geologic, geotechnical, geophysical, and hydrogeologic characteristics of a prospective site for engineering analysis and design of nuclear power plants.

DATES: Submit comments by October 4, 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.

Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

ADDRESSES: You may submit comments by any of the following methods, however, the NRC encourages electronic comment submission through the Federal Rulemaking website:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2021-0153. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301-415-0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Mail comments to:* Office of Administration, Mail Stop: TWFN-7-A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Program Management, Announcements, and Editing Staff.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Edward O’Donnell, telephone: 301-415-3317, email: Edward.ODonnell@nrc.gov and Scott Stovall, telephone: 301-415-

2405, email: Scott.Stovall@nrc.gov. Both are staff of the Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2021-0153 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-2021-0153.

- *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. DG-1392, "Site Characterization Investigations for Nuclear Power Plants" is available in ADAMS under Accession No. ML21194A176.

- *Attention*: The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at pdr.resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking Website (<https://www.regulations.gov>). Please include Docket ID NRC-2021-0153 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include

identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Additional Information

The NRC is issuing for public comment a DG in the NRC's "Regulatory Guide" series. This series was developed to describe methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, to explain techniques that the staff uses in evaluating specific issues or postulated events, and to describe information that the staff needs in its review of applications for permits and licenses.

The DG, entitled, "Site Characterization Investigations for Nuclear Power Plants" is proposed Revision 3 of RG 1.132, which is temporarily identified by its task number, DG-1392. It proposes guidance on field investigations for determining the geologic, geotechnical, geophysical, and hydrogeologic characteristics of a prospective site for engineering analysis and design of nuclear power plants.

The staff is also issuing for public comment a draft regulatory analysis for revision of RG 1.132 (ADAMS Accession No. ML21194A177). The staff develops a regulatory analysis to assess the value of issuing or revising a regulatory guide as well as alternative courses of action.

III. Backfitting, Forward Fitting, and Issue Finality

Issuance of DG-1392, if finalized, would not constitute backfitting as that term is defined in section 50.109 of title 10 of the *Code of Federal Regulations* (10 CFR), "Backfitting," and as described in NRC Management Directive (MD) 8.4, "Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests"; constitute forward fitting as that term is defined and described in MD 8.4; or affect issue finality of any approval issued under 10 CFR part 52, "Licenses, Certificates, and Approvals for Nuclear Power Plants." As explained in DG-1392, applicants and licensees are not required to comply with the positions set forth in DG-1392.

Dated: August 12, 2021.

For the Nuclear Regulatory Commission.

Ronaldo V. Jenkins,

Acting Chief, Regulatory Guidance and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2021-17686 Filed 8-17-21; 8:45 am]

BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION

[Docket No. CP2020-234]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 20, 2021.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505

(Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s)*: CP2020–234; *Filing Title*: Notice of the United States Postal Service of Filing Modification One to Global Reseller Expedited Package 2 Negotiated Service Agreement; *Filing Acceptance Date*: August 12, 2021; *Filing Authority*: 39 CFR 3035.105; *Public Representative*: Gregory Stanton; *Comments Due*: August 20, 2021.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2021–17695 Filed 8–17–21; 8:45 am]

BILLING CODE 7710-FW-P

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service™.

ACTION: Notice of modified systems of records.

SUMMARY: The United States Postal Service® (Postal Service) is proposing to modify several General Privacy Act Systems of Records (SOR) to support improved communication efforts within USPS Human Resources employee applications or systems, to sponsor and

support a voluntary wellness challenge and program initiative for employees to promote fitness and health, and to reflect recent organizational changes.

DATES: These revisions will become effective without further notice on September 17, 2021, unless, in response to comments received on or before that date result in a contrary determination.

ADDRESSES: Comments may be submitted via email to the Privacy and Records Management Office, United States Postal Service Headquarters (privacy@usps.gov). To facilitate public inspection, arrangements to view copies of any written comments received will be made upon request.

FOR FURTHER INFORMATION CONTACT: Janine Castorina, Chief Privacy and Records Management Officer, Privacy and Records Management Office, 202–268–3069 or privacy@usps.gov.

SUPPLEMENTARY INFORMATION: This notice is in accordance with the Privacy Act requirement that agencies publish their systems of records in the **Federal Register** when there is a revision, change, or addition, or when the agency establishes a new system of records. The Postal Service is proposing revisions to existing systems of records (SOR) to facilitate improved employee communication efforts, to support a voluntary wellness challenge and program initiative for employees, and to update system manager titles consistent with the current organizational structure of the Postal Service.

I. Background

The Postal Service utilizes a modern integrated Human Resources technology system to help optimize, manage, and develop the Postal Service workforce to meet identified business needs. It contains modules for learning, succession planning, performance evaluation, compensation, recruiting/on-boarding and analytical reporting.

The Postal Service is also developing a voluntary wellness initiative to assist participating employees in achieving their individual wellness goals. The voluntary wellness challenges and programs initiative is designed to provide motivation and enhanced engagement to participating employees that have expressed interest in improving their health or achieving wellness goals through the use of individual or team challenges and related wellness programs.

The wellness initiative will track and report challenge activities and summarize outcomes during each program cycle period using anonymous designations for individual employees. For example, participant alias names

will be used in all wellness program dashboard participant input and activity reporting to protect the privacy of individuals. In addition, at the end of each program cycle, top tier final results and/or random prize winners (when applicable) will be reported only after obtaining individual employee permission.

II. Rationale for Changes to USPS Privacy Act Systems of Records

The Postal Service is proposing modifications to USPS SOR 100.000, General Personnel Records, USPS SOR 100.100, Recruiting, Examining, and Placement Records, USPS SOR 100.300, Employee Development and Training Records and USPS SOR 100.400, Personnel Compensation and Payroll Records to facilitate improved communication to employees. Human Resources requires the need to capture and store an employee's personal email and phone number for both pre-hire and after the effective date of the appointment in order to:

Communicate relevant Human Resource information to employees.

Communicate with employees about human resource related topics, employment, and gather feedback through surveys. Communicate with employees regarding training assignments and requirements both prior to and after effective date of employment or placement.

New purposes are also being added to SOR 100.300, Employee Development and Training Records to reflect enhanced capabilities and functionality for the USPS career learning and development portal. This portal provides a collaborative employee forum that promotes information sharing and cross-functional participation. Opportunities are also provided for sharpening professional skills and abilities, along with personal development.

New purposes are being added to SOR 100.400, Personnel Compensation and Payroll Records, in support of both improved communication efforts and the Voluntary Wellness Challenge and Program initiative described above. In addition, Categories of Records, Source Record Categories and Retention time for records related to the Wellness Challenge and Program participation are being modified to support the initiative and align with two new purposes for program administration, along with tracking activities and reporting summary results.

Finally, the Postal Service is proposing administrative changes for system managers within the four SORs

¹ See Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

included in this **Federal Register** Notice to reflect recent organizational changes.

III. Description of the Modified Systems of Records

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed revisions to these SORs has been sent to Congress and to the Office of Management and Budget for their evaluations. The Postal Service does not expect that these modified systems of records will have any adverse effect on individual privacy rights. Accordingly, for the reasons stated above, the Postal Service proposes revisions to these four systems of records as follows:

SYSTEM NAME AND NUMBER:

USPS 100.000 General Personnel Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

All USPS facilities and personnel offices; Integrated Business Solutions Services Centers; National Personnel Records Center; Human Resources Information Systems; Human Resources Shared Services Center; Headquarters; Computer Operations Service Centers; and contractor sites.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President, Human Resources, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 410, 1001, 1005, and 1206.

PURPOSE(S) OF THE SYSTEM:

1. To determine suitability for employment.
2. To provide managers, HR personnel, and medical officers with information for recruiting and recommending appointment of qualified individuals.
3. To facilitate communication between the Postal Service and individual employees, new hires and applicants, including current and former employees.
4. To share relevant information and topics about the Postal Service with individual employees, new hires and applicants, including current and former employees.
5. To gather voluntary feedback from individual employees, new hires and applicants, including current and former employees.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former USPS employees, retirees, new hires, applicants for employment, and potential applicants with candidate profiles.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Current and former USPS employee's information, retirees, new hires, applicants, and potential applicants with candidate profiles: Name(s), Social Security Number(s), Candidate Identification Number, Employee Identification Number, date(s) of birth, postal assignment or vacancy/job posting history information, work contact information, home address(es) and phone number(s), SMS text message number, personal email address, finance number(s), duty location, and pay location.

2. Pre-employment investigation information: Records compiled by USPS, including criminal, employment, military, and driving records; drug screening and medical assessment results. Also includes Special Agency Check with Inquiries (SACI) and National Agency Check with Inquiry (NACI): Investigative records requested by USPS and compiled by the Office of Personnel Management (OPM) for newly hired employees, including postal inspectors' investigative reports.

3. Recruiting, examining, and placement information: Records related to candidate profiles, applications, test results, interview documentation, and suitability screening.

RECORD SOURCE CATEGORIES:

Applicants; potential applicants with candidate profiles; OPM; police, driving, and military records; former employers and named references; medical service providers; school officials; other federal agencies; and state divisions of vocational rehabilitation counselors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Standard routine uses 1. through 9. apply.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Automated database, computer storage media, digital files, and paper files.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

By applicant or employee name, Social Security Number, Candidate Identification Number, Employee Identification Number, duty or pay location, or posting/vacancy to which application was made.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

1. Preemployment investigation records are retained 10 years from the date the individual is initially found suitable for employment, or 10 years from the date action was taken to deny or terminate employment.

2. Candidate information and Candidate Identification Number are retained for a minimum of 2 years. Vacancy files, including applicant/employee name, identification number, posting/vacancy number, and information supplied by applicant/employee in response to the vacancy posting, are retained 5 years. Employment registers are retained 10 years. Certain forms related to a successful applicant are filed in the electronic Official Personnel Folder as permanent records.

3. Paper examining answer sheets are retained 6 months; and computer media copies are retained 10 years. Scanned Maintenance Selection System forms are retained 10 years, and related hiring lists are retained 5 years.

Records existing on paper are destroyed by burning, pulping, or shredding. Records existing on computer storage media are destroyed according to the applicable USPS media sanitization practice.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records, computers, and computer storage media are located in controlled-access areas under supervision of program personnel. Access to these areas is limited to authorized personnel, who must be identified with a badge.

Access to records is limited to individuals whose official duties require such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections.

Computers are protected by mechanical locks, card key systems, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and USPS Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.5.

CONTESTING RECORD PROCEDURES:

See Notification Procedures below and Record Access Procedures above.

NOTIFICATION PROCEDURES:

Individuals wanting to know if information about them is maintained in this system must address inquiries to Human Resources Shared Services Center, P.O. Box 970400, Greensboro, NC 27497-0400. Inquiries must include full name, Candidate Identification Number (as provided during the application process) or Employee Identification Number, name and address of facility where last employed, and dates of USPS employment or date of application.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(j) and (k), USPS has established regulations at 39 CFR 266.9 that exempt records in this system depending on their purpose.

HISTORY:

February 25, 2019, 84 FR 6022;
January 26, 2018, 83 FR 3777; July 19,
2013, 78 FR 43247; February 22, 2013,
78 FR 12368; June 17, 2011, 76 FR
35483; April 29, 2005, 70 FR 22516.

* * * * *

Attorney, Federal Compliance.

SYSTEM NAME AND NUMBER:

USPS 100.100 Recruiting, Examining,
and Placement Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Pre-employment investigation records are located at USPS Human Resources (HR) offices and contractor locations, except for drug screening and medical examination records, which are maintained in USPS medical facilities and designee offices.

Recruiting, examining, and placement records are located at USPS HR offices, Headquarters, Human Resources Shared Services Center, Integrated Business Solutions Services Centers, the Bolger Center for Leadership Development, the National Center for Employee Development, and contractor locations.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President, Human Resources,
United States Postal Service, 475
L'Enfant Plaza SW, Washington, DC
20260.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 410, 1001, 1005, and
1206.

PURPOSE(S) OF THE SYSTEM:

1. To determine suitability for employment.

2. To provide managers, HR personnel, and medical officers with information for recruiting and recommending appointment of qualified individuals.

3. To administer the USPS fleet card program used to purchase commercial fuel and oil, maintenance repair, polishing and washing, servicing, shuttling, and towing.

4. To facilitate communication between the Postal Service and individual employees, new hires and applicants, including current and former employees.

5. To share relevant information and topics about the Postal Service with individual employees, new hires and applicants, including current and former employees.

6. To gather voluntary feedback from individual employees, new hires and applicants, including current and former employees.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former USPS employees, new hires, applicants for employment, and potential applicants with candidate profiles.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Applicant, potential applicants with candidate profiles, and employee information: Name(s), Social Security Number(s), Candidate Identification Number, Employee Identification Number, date(s) of birth, postal assignment or vacancy/job posting history information, work contact information, home address(es) and phone number(s), SMS text message number, personal email address, finance number(s), duty location, pay location, and Fuel Purchase Fleet Card Personal Identification Number (PIN).

2. Pre-employment investigation information: Records compiled by USPS, including criminal, employment, military, and driving records; drug screening and medical assessment results. Also includes Special Agency Check with Inquiries (SACI) and National Agency Check with Inquiry (NACI): Investigative records requested by USPS and compiled by the Office of Personnel Management (OPM) for newly hired employees, including postal inspectors' investigative reports.

3. Recruiting, examining, and placement information: Records related to candidate profiles, applications, test results, interview documentation, and suitability screening.

RECORD SOURCE CATEGORIES:

Applicants; potential applicants with candidate profiles; OPM; police,

driving, and military records; former employers and named references; medical service providers; school officials; other federal agencies; and state divisions of vocational rehabilitation counselors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Standard routine uses 1. through 9. apply.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Automated database, computer storage media, and paper.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

By applicant or employee name, Social Security Number, Candidate Identification Number, Employee Identification Number, duty or pay location, or posting/vacancy to which application was made, and Fleet Card Personal Identification Number (PIN).

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

1. Pre-employment investigation records are retained 10 years from the date the individual is initially found suitable for employment, or 10 years from the date action was taken to deny or terminate employment.

2. Candidate information and Candidate Identification Number are retained for a minimum of 2 years. Vacancy files, including applicant/employee name, identification number, posting/vacancy number, and information supplied by applicant/employee in response to the vacancy posting, are retained 5 years. Employment registers are retained 10 years. Certain forms related to a successful applicant are filed in the electronic Official Personnel Folder as permanent records.

3. Paper examining answer sheets are retained 6 months; and computer media copies are retained 10 years. Scanned Maintenance Selection System forms are retained 10 years, and related hiring lists are retained 5 years.

4. Records pertaining to the USPS fuel fleet card purchase program are retained for 10 years.

Records existing on paper are destroyed by burning, pulping, or shredding. Records existing on computer storage media are destroyed according to the applicable USPS media sanitization practice.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records, computers, and computer storage media are located in

controlled-access areas under supervision of program personnel. Access to these areas is limited to authorized personnel, who must be identified with a badge.

Access to records is limited to individuals whose official duties require such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections.

Computers are protected by mechanical locks, card key systems, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and USPS Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.5.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

NOTIFICATION PROCEDURES:

Individuals wanting to know if information about them is maintained in this system must address inquiries to Human Resources Shared Services Center, P.O. Box 970400, Greensboro, NC 27497-0400. Inquiries must include full name, Candidate Identification Number (as provided during the application process) or Employee Identification Number, name and address of facility where last employed, and dates of USPS employment or date of application.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

February 25, 2019, 84 FR 6022; July 19, 2013, 78 FR 43247; June 17, 2011, 76 FR 35483; April 29, 2005, 70 FR 22516.

* * * *

Attorney, Federal Compliance.

SYSTEM NAME AND NUMBER:

USPS 100.300 Employee Development and Training Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Management training centers, Integrated Business Solutions Services

Centers, other USPS facilities where career development and training records are stored, and contractor sites.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President, Human Resources, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

Vice President, Organization Development, United States Postal Service, 475 L'Enfant Plaza SW, Washington DC 20260.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 410, 1001, 1005, and 1206.

PURPOSE(S) OF THE SYSTEM:

1. To provide managers, supervisors, and training and development professionals with decision-making information for employee career development, succession planning, training, and assignment.

2. To make and track employee job assignments, to place employees in new positions, and to assist in career planning and training in general.

3. To provide statistics for personnel and workload management.

4. To provide employees with an online platform that supports individual and career development.

5. To facilitate voluntary information sharing through an enhanced employee profile tool that highlights individual education, knowledge and experience.

6. To provide employees with convenient and flexible online learning options.

7. To create a forum that promotes a culture for participation in voluntary career development activities and opportunities.

8. To create a readily available source of information about current employee talents, skills, and abilities.

9. To communicate with and provide notification to individuals about training assignments and requirements, both prior to and after effective date of employment or placement.

10. To facilitate communication between the Postal Service and individual employees, new hires and applicants, including current and former employees.

11. To share relevant information and topics about the Postal Service with individual employees, new hires and applicants, including current and former employees.

12. To request and gather voluntary feedback from individual employees, new hires and applicants, including current and former employees.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former USPS employees, new hires and applicants.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Employee information: Name, Social Security Number, Employee Identification Number, phone number(s), SMS text message number, personal email address, demographic information, photograph, years of service, retirement eligibility, postal assignment information, work contact information, finance number(s), duty location, and pay location.

2. Employee development and training information: Records related to career development, work history, assessments, skills bank participation, USPS- and non-USPS-sponsored training, examinations, evaluations of training, and USPS lodging when a discrepancy report is filed against the student about unauthorized activities while occupying the room.

RECORD SOURCE CATEGORIES:

Employees; employees' supervisor or manager; and other systems of records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Standard routine uses 1. through 9. apply.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Automated database, computer storage media, digital files, and paper files.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

By employee name, Social Security Number, or Employee Identification Number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

1. Training records are retained 5 years. Training-related travel records are retained 1 year.

2. Records related to succession planning and individual development planning are retained 10 years.

3. Examination records are retained 1 year after employee separation.

4. Skills bank records are retained up to 2 years.

Records existing on paper are destroyed by burning, pulping, or shredding. Records existing on computer storage media are destroyed according to the applicable USPS media sanitization practice.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records, computers, and computer storage media are located in

controlled-access areas under supervision of program personnel. Access to these areas is limited to authorized personnel, who must be identified with a badge.

Access to records is limited to individuals whose official duties require such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections.

Computers are protected by mechanical locks, card key systems, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and USPS Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.5.

CONTESTING RECORD PROCEDURES:

See Notification Procedures below and Record Access Procedures above.

NOTIFICATION PROCEDURES:

Individuals wanting to know if information about them is maintained in this system must address inquiries to the facility head where currently or last employed. Headquarters employees must submit inquiries to Corporate Personnel Management, 475 L'Enfant Plaza SW, Washington, DC 20260. Inquiries must include full name, Social Security Number or Employee Identification Number, name and address of facility where last employed, and dates of USPS employment.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(j) and (k), USPS has established regulations at 39 CFR 266.9 that exempt records in this system depending on their purpose. The USPS has also claimed exemption from certain provisions of the Act for several of its other systems of records at 39 CFR 266.9. To the extent that copies of exempted records from those other systems are incorporated into this system, the exemptions applicable to the original primary system continue to apply to the incorporated records.

HISTORY:

July 19, 2013, 78 FR 43247; June 17, 2011, 76 FR 35483; April 29, 2005, 70 FR 22516.

* * * * *

Attorney, Federal Compliance.

SYSTEM NAME AND NUMBER:

USPS 100.400 Personnel Compensation and Payroll Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

USPS Area and District Human Resources offices, the Human Resources Shared Services Center, Integrated Business Solutions Services Centers, Computer Operations Services Centers, Accounting Services Centers, other area and district facilities, USPS Headquarters, contractor sites, and all organizational units.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Postmaster General and Chief Human Resources Officer, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

Vice President, Human Resources, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

Vice President, Controller, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 409, 410, 1001, 1003, 1004, 1005, and 1206; and 29 U.S.C. 2601 *et seq.*

PURPOSE(S) OF THE SYSTEM:

1. To support all necessary compensation and payroll activities and related management functions.
2. To generate lists of employee information for home mailings, dues membership, and other personnel support functions.
3. To generate retirement eligibility information and analysis of employees in various salary ranges.
4. To administer the purchase of uniforms.
5. To administer monetary awards programs and employee contests.
6. To detect improper payment related to injury compensation claims.
7. To adjudicate employee claims for loss or damage to their personal property in connection with or incident to their postal duties.
8. To process garnishment of employee wages.
9. To support statistical research and reporting.
10. To generate W-2 and 1095-C information for use with external third-party tax preparation services at the request of the individual employee.
11. To administer the USPS fleet card program used to purchase commercial fuel and oil, maintenance repair,

polishing and washing, servicing, shuttling, and towing.

12. To develop and administer voluntary wellness challenges and programs to support individual employee wellness goals.

13. To track and summarize voluntary wellness challenge activities during each program cycle for individual employees and employee team participants

14. To facilitate communication between the Postal Service and current and former employees.

15. To share relevant information and topics about the Postal Service with current and former employees.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Current and former USPS employees and postmaster relief/leave replacement employees.
2. Current and former employees' family members, beneficiaries, and former spouses who apply and qualify for benefits.
3. An agent or survivor of an employee who makes a claim for loss or damage to personal property.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Employee and family member information: Name(s), Social Security Number(s), Employee Identification Number, ACE ID, date(s) of birth, postal assignment information, work contact information, home address(es) and phone number(s), SMS text message number, personal email address, finance number(s), occupation code, occupation title, duty location, and pay location, and Fuel Purchase Fleet Card Personal Identification Number (PIN).
2. Compensation and payroll information: Records related to payroll, annual salary, hourly rate, Rate Schedule Code (RSC) or pay type, payments, deductions, compensation, and benefits; uniform items purchased; proposals and decisions under monetary awards; suggestion programs and contests; injury compensation; monetary claims for personal property loss or damage; and garnishment of wages.
3. Voluntary Employee Wellness Participant Challenge and Program Tracking and Reporting Activities: Type of wellness activity or program, wellness activities and points tracked and reported, self-selected alias names for participants, department or team name, work duty location, gender, weight, reporting of top tier final results and/or prize winners by wellness challenge or program with employee permission.

RECORD SOURCE CATEGORIES:

Employees; employees' supervisor or manager; other systems of records; claimants or their survivors or agents who make monetary claims; witnesses; investigative sources; courts; and insurance companies.

Voluntary employee wellness participant challenge and program initiative records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Standard routine uses 1. through 9. apply. In addition:

(a) Records pertaining to financial institutions and to nonfederal insurance carriers and benefits providers elected by an employee may be disclosed for the purposes of salary payment or allotments, eligibility determination, claims, and payment of benefits.

(b) Records pertaining to supervisors and postmasters may be disclosed to supervisory and other managerial organizations recognized by USPS.

(c) Records pertaining to recipients of monetary awards may be disclosed to the news media when the information is of news interest and consistent with the public's right to know.

(d) Disclosure of records about current or former Postal Service employees may be made to requesting states under an approved computer matching program to determine employee participation in, and eligibility under, unemployment insurance programs administered by the states (and by those states to local governments), to improve program integrity, and to collect debts and overpayments owed to those governments and their components.

(e) Disclosure of records about current or former Postal Service employees may be made to requesting federal agencies or nonfederal entities under approved computer matching programs to make a determination of employee participation in, and eligibility under, particular benefit programs administered by those agencies or entities or by USPS; to improve program integrity; to collect debts and overpayments owed under those programs and to provide employees with due process rights prior to initiating any salary offset; and to identify those employees who are absent parents owing child support obligations and to collect debts owed as a result.

(f) Disclosure of records about current or former Postal Service employees may be made, upon request, to the Department of Defense (DoD) under approved computer matching programs to identify Postal Service employees who are ready reservists for the purposes of updating DoD's listings of

ready reservists and to report reserve status information to USPS and the Congress; and to identify retired military employees who are subject to restrictions under the Dual Compensation Act and to take subsequent actions to reduce military retired pay or collect debts and overpayments.

(g) Disclosure of records may be made to the Internal Revenue Service under approved computer matching programs to identify current or former Postal Service employees who owe delinquent federal taxes or returns and to collect the unpaid taxes by levy on the salary of those individuals pursuant to Internal Revenue Code; and to make a determination as to the proper reporting of income tax purposes of an employee's wages, expenses, compensation, reimbursement, and taxes withheld and to take corrective action as warranted.

(h) Disclosure of the records about current or recently terminated Postal Service employees may be made to the Department of Transportation (DOT) under an approved computer matching program to identify individuals who appear in DOT's National Driver Register Problem Driver Pointer System. The matching results are used only to determine as a general matter whether commercial license suspension information within the pointer system would be beneficial in making selections of USPS motor vehicle and tractor-trailer operator personnel and will not be used for actual selection decisions.

(i) Disclosure of records about current or former Postal Service employees may be made to the Department of Health and Human Services under an approved computer matching program for further release to state child support enforcement agencies when needed to locate noncustodial parents, to establish and/or enforce child support obligations, and to locate parents who may be involved in parental kidnapping or child custody cases.

(j) Disclosure of records about current or former Postal Service employees may be made to the Department of the Treasury under Treasury Offset Program computer matching to establish the identity of the employee as an individual owing a delinquent debt to another federal agency and to offset the salary of the employee to repay that debt.

(k) Disclosure of employment and wage data records about current Postal Service employees may be made to the Bureau of Labor Statistics for use in their Occupational Employment Statistics program for the purpose of developing estimates of the number of

jobs in certain occupations, and estimates of the wages paid to them.

(l) Disclosure of W-2 and 1095-C tax information records to external third-party tax preparation services.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Automated database, computer storage media, digital files, and paper files.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

By employee name, Social Security Number, Employee Identification Number, Fuel Purchase Fleet Card Personal Identification Number (PIN), or duty or pay location.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

1. Leave application and unauthorized overtime records are retained 3 years. Time and attendance records (other than payroll) and local payroll records are retained 3 years. Automated payroll records are retained 10 years.

2. Uniform allowance case files are retained 3 years; and automated records are retained 6 years.

3. Records of monetary awards with a status that they have been processed, failed processing, cancelled, or reported (Service Award Pins, Retirement Service Awards, Posthumous Service Awards) are retained 7 years, as payroll records would have been affected/processed. Records of award submissions with the status approved, deleted, or as a draft are retained 31 days, as payroll records would not have been affected/processed.

4. Records of employee-submitted ideas are maintained for 90 days after being closed.

5. Injury compensation records are retained 5 years. Records resulting in affirmative identifications become part of a research case file, which if research determines applicability, become either part of an investigative case record or a remuneration case record that is retained 2 years beyond the determination.

6. Monetary claims records are retained 3 years.

7. Automated records of garnishment cases are retained 6 months. Records located at a Post Office are retained 3 years.

8. Overtime administrative records are retained for 7 years.

9. Tax preparation records are limited to an employee's previous year's wages, tax documentation, and health insurance coverage as required by the Affordable Care Act.

10. Records pertaining to the USPS fuel fleet card purchase program are retained for 10 years.

11. Records related to voluntary wellness challenges and programs will be retained for 30 days after the conclusion of each challenge or program cycle.

Records existing on paper are destroyed by burning, pulping, or shredding. Records existing on computer storage media are destroyed according to the applicable USPS media sanitization practice.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records, computers, and computer storage media are located in controlled-access areas under supervision of program personnel. Access to these areas is limited to authorized personnel, who must be identified with a badge.

Access to records is limited to individuals whose official duties require such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections.

Computers are protected by mechanical locks, card key systems, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software.

For the voluntary employee wellness initiative, employees will create their own profile and enter their own challenge activity progress. Employees without access to U.S. Postal Service computers and employees voluntarily participating in the weight loss challenges may opt-in to a manual process to have their profile created and entries updated by a designated wellness challenge coordinator for their geographic location.

Participant alias names will be used in all wellness program dashboard participant input and activity reporting to protect the privacy of individuals. In addition, weight loss challenge dashboards will only display the percentage of weight loss for the employee by alias names, rather than actual weights.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and USPS Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.5.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

NOTIFICATION PROCEDURES:

Individuals wanting to know if information about them is maintained in this system must address inquiries to the facility head where currently or last employed. Headquarters employees must submit inquiries to Corporate Personnel Management, 475 L'Enfant Plaza SW, Washington, DC 20260. Inquiries must include full name, Social Security Number or Employee Identification Number, name and address of facility where last employed, and dates of USPS employment.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Records in this system relating to injury compensation that have been compiled in reasonable anticipation of a civil action or proceeding are exempt from individual access as permitted by 5 U.S.C. 552a(d)(5). The USPS has also claimed exemption from certain provisions of the Act for several of its other systems of records at 39 CFR 266.9. To the extent that copies of exempted records from those other systems are incorporated into this system, the exemptions applicable to the original primary system continue to apply to the incorporated records.

HISTORY:

June 15, 2020, 85 FR 29492; February 25, 2019, 84 FR 6022; February 23, 2017, 82 FR 11489; March 2, 2015, 80 FR 11241; June 17, 2011, 76 FR 35483; April 29, 2005, 70 FR 22516.

Joshua J. Hofer,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2021-17250 Filed 8-17-21; 8:45 am]

BILLING CODE 7710-12-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92650; File No. SR-NYSEArca-2021-29]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of ConvexityShares 1x SPIKES Futures ETF Under NYSE Arca Rule 8.200-E (Trust Issued Receipts)

August 12, 2021.

I. Introduction

On May 13, 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" or "Exchange Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares ("Shares") of the ConvexityShares 1x SPIKES Futures ETF ("Fund"), a series of the ConvexityShares Trust ("Trust"), under NYSE Arca Rule 8.200-E, Commentary .02 ("Trust Issued Receipts"). The proposed rule change was published for comment in the **Federal Register** on May 26, 2021.³ On July 2, 2021, pursuant to Section 19(b)(2) of the 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 approve or disapprove the proposed rule change.⁵ On July 26, 2021, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.⁶ The

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 91952 (May 20, 2021), 86 FR 28410.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 92321, 86 FR 36173 (July 8, 2021). The Commission designated August 24, 2021, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

⁶ In Amendment No. 1, the Exchange: (i) Stated that Teucrum Trading, LLC will be the Sub-Adviser for the Fund; (ii) represented that neither the Sponsor nor the Sub-Adviser (as such terms are defined below) is registered as a broker-dealer or affiliated with a broker-dealer and made additional representations with respect to firewalls; (iii) stated that the Fund will seek investment results, before fees and expenses, that correspond to the performance of the Index (as defined below) and that the Fund will seek to track the Index over time, not just for a single day; (iv) stated that the Sponsor or Sub-Adviser determines the type, quantity and mix of investments that the Sponsor or Sub-Adviser believes, in combination, should provide exposure to the Index to seek investment results equal to the performance of the Index; (v) stated that the Sponsor or Sub-Adviser may cause the Fund to invest in VIX Related Positions (as defined below) if the market for a specific futures contract experiences emergencies or disruptions or in situations where the Sponsor or Sub-Adviser deems it impractical or inadvisable to buy or sell SPIKES futures contracts; (vi) represented that (a) the Fund will attempt to limit counterparty risk in uncleared swap agreements by entering into such agreements only with counterparties the Sponsor and Sub-Adviser believes are creditworthy and by limiting the Fund's exposure to each counterparty and (b) the Sponsor and Sub-Adviser will monitor the creditworthiness of each counterparty and the Fund's exposure to each counterparty on an ongoing basis; (vii) stated that, with respect to halting trading in the Shares, the Exchange may consider (a) the extent to which trading is not occurring in the securities and/or the financial instruments composing the daily disclosed portfolio of the Fund; or (b) whether other unusual

Commission has received no comments on the proposed rule change. The Commission is publishing this notice and order to solicit comments on Amendment No. 1 from interested persons, and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act⁷ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1⁸

The Exchange proposes to list and trade Shares of the Fund⁹ under NYSE Arca Rule 8.200–E, Commentary .02 which governs the listing and trading of Trust Issued Receipts¹⁰ on the Exchange. The Fund will be managed and controlled by ConvexityShares, LLC (“Sponsor”), a commodity pool operator.¹¹ Teucrium Trading, LLC, a

conditions or circumstances detrimental to the maintenance of a fair and orderly market are present; (viii) represented that information regarding market price and trading volume for the Shares will be continually available on a real-time basis throughout the day on brokers’ computer screens and other electronic services; (ix) represented that prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of, among other things, the special characteristics and risks associated with trading the Shares, the prospectus delivery requirements applicable to the Fund, and any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act; and (x) made technical, clarifying, and conforming changes. Amendment No. 1 is available at: <https://www.sec.gov/comments/sr-nysearca-2021-29/srnysearca202129.htm>.

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ Additional information regarding the Fund, the Trust, and the Shares, including investment strategies, creation and redemption procedures, and portfolio holdings can be found in Amendment No. 1, *supra* note 6.

⁹ On December 15, 2020, the Trust submitted to the Commission its draft registration statement on Form S–1 (“Registration Statement”) under the Securities Act of 1933 on a confidential basis. The Registration Statement for the Fund is not yet effective and the Exchange will not commence trading in Shares of the Fund until the Registration Statement becomes effective.

¹⁰ Commentary .02 to NYSE Arca Rule 8.200–E applies to Trust Issued Receipts that invest in “Financial Instruments.” The term “Financial Instruments,” as defined in Commentary .02(b)(4) to NYSE Arca Rule 8.200–E, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars, and floors; and swap agreements.

¹¹ The Sponsor is not registered as a broker-dealer or affiliated with a broker-dealer. In the event (a) the Sponsor becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new sponsor becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel of the broker-dealer or broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent

commodity trading adviser registered with the Commodity Futures Trading Commission, will be the Sub-Adviser for the Fund (“Sub-Adviser”) and will manage the Fund’s commodity futures investment strategy.¹² U.S. Bank will provide custody and fund accounting to the Trust and the Fund; U.S. Bancorp Fund Services will be the transfer agent for the Shares and administrator for the Fund; and Foreside will serve as the distributor for the Fund.

The Fund will seek investment results, before fees and expenses, that correspond to the performance of its benchmark index. The Fund will seek to track the Index over time, not just for a single day. The Fund is benchmarked to the T3 SPIKE Front 2 Futures Index (“Index”), an investable index of SPIKES futures contracts.¹³ The Index is intended to reflect the returns that are potentially available through an unleveraged investment in a theoretical portfolio of first- and second-month futures contracts on the SPIKES Volatility Index (“SPIKES Index”).¹⁴

the use and dissemination of material non-public information regarding the portfolio.

¹² The Sub-Adviser is not registered as a broker-dealer or affiliated with a broker-dealer. In the event (a) the Sub-Adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new Sub-Adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel of the broker-dealer or broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

¹³ The Index is sponsored by Triple Three Partners Pty Ltd, which licenses the use of the Index to its affiliated company, T3i Pty Ltd (Triple Three Partners Pty Ltd and T3i Pty Ltd. are collectively referred to herein as “T3 Index” or “Index Sponsor”). The Index Sponsor is affiliated with the Sponsor. The Index Sponsor has implemented and will maintain a fire wall regarding access to information concerning the composition of and/or changes to the Index. In addition, the Index Sponsor has implemented and will maintain procedures that are designed to prevent the use and dissemination of material, non-public information regarding the Index. The Index Sponsor is not registered as an investment adviser or broker-dealer and is not affiliated with any broker-dealers. The Index is calculated and published by Solactive AG, which is not affiliated with T3 Index.

¹⁴ The Exchange states that the SPIKES Index is a non-investable index that measures the implied volatility of the SPDR S&P 500 ETF Trust (“SPY”) over 30 days in the future. SPY is a unit investment trust that holds a portfolio of common stocks that closely tracks the price performance and dividend yield of the S&P 500 Composite Price Index (“S&P 500”). The SPIKES Index does not represent the actual or the realized volatility of SPY. The SPIKES Index is calculated based on the prices of a constantly changing portfolio of SPY put and call options. The SPIKES Index is reflective of the premium paid by investors for certain options linked to the level of the S&P 500. The SPIKES

The Index is comprised solely of SPIKES futures contracts.¹⁵ The Index employs rules for selecting the SPIKES futures contracts comprising the Index and a formula to calculate a level for the Index from the prices of these SPIKES futures contracts. Currently, the SPIKES futures contracts comprising the Index represent the prices of two near-term SPIKES futures contracts, replicating a position that rolls the nearest month SPIKES futures contracts to the next month SPIKES futures contracts at or close to the daily settlement price via a Trade-At-Settlement¹⁶ program towards the end of each business day in equal fractional amounts. This results in a constant weighted average maturity of one month.

The Fund will invest primarily in SPIKES futures contracts to gain the appropriate exposure to the Index. Under certain circumstances (described below), the Fund may also invest in futures contracts and swap contracts (“VIX Related Positions”) on the Cboe Volatility Index (“VIX”).¹⁷ The Exchange states that the VIX is an index that tracks volatility and would be expected to perform in a substantially similar manner as the SPIKES Index.

The Fund seeks to achieve its investment objective through the appropriate amount of exposure to the SPIKES futures contracts included in the Index. The Fund will not directly invest in the SPIKES Index. The Sponsor or Sub-Adviser determines the

Index is a theoretical calculation and cannot be traded on a spot basis. T3 Index is the owner, creator and licensor of the SPIKES Index. The SPIKES Index is calculated, maintained and published by Miami International Securities Exchange, LLC via the Options Price Reporting Authority.

¹⁵ According to the Exchange, SPIKES futures contracts were launched for trading by the Minneapolis Grain Exchange, LLC (“MGEX”) on December 14, 2020. While the SPIKES Index represents a measure of the expected 30-day volatility of SPY, the prices of SPIKES futures contracts are based on the current expectation of the expected 30-day volatility of SPY on the expiration date of the futures contract.

¹⁶ According to the Exchange, a Trade at Settlement (“TAS”) transaction is a transaction at a price equal to the daily settlement price, or at a specified differential above or below the daily settlement price. The TAS transaction price will be determined following execution and based upon the daily settlement price of the respective SPIKES futures contracts month. The permissible price range for permitted TAS transactions is from 0.50 index points below the daily settlement price to 0.50 index points above the daily settlement price. The permissible minimum increment for a TAS transaction is 0.01 index points. See MGEX Rule 83.15 at <http://www.mgex.com/documents/20210318-Rulebook.pdf>.

¹⁷ According to the Exchange, the VIX is a measure of estimated near-term future volatility based upon the weighted average of the implied volatilities of near-term put and call options on the S&P 500.

type, quantity and mix of investments that the Sponsor or Sub-Adviser believes, in combination, should provide exposure to the Index to seek investment results equal to the performance of the Index. In the event accountability rules, price limits, position limits, margin limits or other exposure limits are reached with respect to SPIKES futures contracts, or if the market for a specific futures contract experiences emergencies (e.g., natural disaster, terrorist attack or an act of God) or disruptions (e.g., a trading halt or a flash crash), or in situations where the Sponsor or Sub-Adviser deems it impractical or inadvisable to buy or sell SPIKES futures contracts (such as during periods of market volatility or illiquidity, or when trading in SPY is halted), the Sponsor or Sub-Adviser may cause the Fund to invest in VIX Related Positions. The Sponsor expects the Fund's positions in VIX Related Positions to consist primarily of VIX futures contracts, which are traded on the Cboe Futures Exchange. However, in the event accountability rules, price limits, position limits, margin limits or other exposure limits are reached with respect to VIX futures contracts, or if the market for a specific VIX futures contract experiences emergencies or disruptions or in situations where the Sponsor or Sub-Adviser deems it impractical or inadvisable to buy or sell VIX futures contracts, the Fund would hold VIX swap agreements.¹⁸ The Fund will also hold cash or cash equivalents such as U.S. Treasury securities or other high credit quality, short-term fixed-income or similar securities (such as shares of money market funds) as collateral for investments and pending investments.

III. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEArca–2021–29, as Modified by Amendment No. 1, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act¹⁹ to determine whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy

¹⁸ The Fund will attempt to limit counterparty risk in uncleared swap agreements by entering into such agreements only with counterparties the Sponsor and Sub-Adviser believes are creditworthy and by limiting the Fund's exposure to each counterparty. The Exchange represents that the Sponsor and Sub-Adviser will monitor the creditworthiness of each counterparty and the Fund's exposure to each counterparty on an ongoing basis.

¹⁹ 15 U.S.C. 78s(b)(2)(B).

issues raised by the proposal. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,²⁰ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposal's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade," and "to protect investors and the public interest."²¹

Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change."²² The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,²³ and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.²⁴

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change, as modified by

²⁰ *Id.*

²¹ 15 U.S.C. 78f(b)(5).

²² 17 CFR 201.700(b)(3).

²³ *See id.*

²⁴ *See id.*

Amendment No. 1, is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.²⁵

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved by September 8, 2021. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by September 22, 2021.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Amendment No. 1, in addition to any other comments they may wish to submit about the proposed rule change. In this regard, the Commission seeks commenters' views regarding whether the Exchange's proposal to list and trade the Shares, which seek to provide investment results that correspond to the return of an index designed to measure the daily performance of a theoretical portfolio of first- and second-month SPIKES futures contracts, is adequately designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest, 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–2021–29 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.

²⁵ Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

All submissions should refer to File Number SR–NYSEArca–2021–29. 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–2021–29 and should be submitted by September 8, 2021. Rebuttal comments should be submitted by September 22, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–17669 Filed 8–17–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92652; File No. SR–ICEEU–2021–014]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change, as Modified by Partial Amendment No. 1, Relating to the ICE Clear Europe Clearing Membership Policy and Clearing Membership Procedures

August 12, 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 August 2, 2021, ICE Clear Europe Limited (“ICE Clear Europe” or the “Clearing House”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule changes described in Items I, II and III below, which Items have been prepared primarily by ICE Clear Europe. On August 11, 2021, ICE Clear Europe filed Partial Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Partial Amendment No. 1 (hereafter referred to as the “proposed rule change”), from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

ICE Clear Europe proposes to adopt a new Clearing Membership Policy (the “Policy”) and new Clearing Membership Procedures (the “Procedures”, and collectively with the Policy, the “Documents”). The revisions would not involve any changes to the ICE Clear Europe Clearing Rules.⁴

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe included statements

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ Partial Amendment No. 1 amended the filing to delete from the filed Exhibit 5B, Clearing Membership Procedures, certain statements in sections 2.4.1 and 2.4.2 of such Procedures concerning the termination of clearing membership by a Clearing Member. Specifically, ICE Clear Europe proposes to remove the statements that it will define a minimum notice period and may publish a Circular confirming that a Termination Notice has been issued, because the appropriate minimum notice period and requirements for publishing a Circular are set forth in existing Clearing Rule 209, which is not proposed to be amended.

⁴ Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules (the “Rules”).

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. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICE Clear Europe is proposing to adopt the new Policy and Procedures to consolidate and summarize its existing clearing membership criteria and to document certain existing processes and procedures concerning the membership application process.

Clearing Membership Policy

ICE Clear Europe is proposing to adopt the new Policy which would describe its clearing membership criteria (which are set forth in full detail in the Rules). The Policy would not change existing membership criteria. The Policy would also address related processes for assessing applicants for membership, variations of permissions and termination of membership.

The Policy would describe clearing membership criteria, starting with a description of the objectives, which accounts for membership risk and ensures that such risks are properly managed and that admission criteria is non-discriminatory, transparent and objective to ensure fair and open access, as well as consistent with relevant regulatory requirements. The Policy would describe how these objectives are met through setting and monitoring appropriate membership criteria, establishing a due diligence process and requiring notifications regarding changes to Clearing Member business. The core clearing membership criteria, including holding sufficient capital, being a party to a Clearing Membership Agreement and others, would be summarized in the Policy (with the full criteria set out in Rule 201 and the CDS Procedures).

The Policy would provide that ICE Clear Europe has established processes for clearing membership application, permission variations and clearing membership termination which are set out in further detail in the Procedures. The Policy would also address monitoring in respect of membership criteria, including periodic in-depth counterparty reviews, periodic review of financial positions and use of its

²⁶ 17 CFR 200.30–3(a)(57).

counterparty rating system, maintenance of a watch list, requiring an annual member return, and other operational monitoring.

The Policy would also provide arrangements for breach management, ongoing reviews and exception handling. This section is consistent with other ICE Clear Europe policies and governance processes. In particular, it would provide that (i) the document owner would be responsible for ensuring that documents remain up-to-date and are reviewed in accordance with the Clearing House's governance processes, (ii) the document owner would report material breaches or unapproved deviations from the Framework to their Head of Department, the Chief Risk Officer and the Head of Compliance (or their delegates) who would determine if further escalation would be made to relevant senior executives, the Board and/or competent authorities, and (iii) exceptions to the Policy would be approved in accordance with the Clearing House's governance process for the approval of changes to such document.

Procedures

The Procedures would describe in further detail the processes for reviewing applications for clearing membership, variations of membership permissions, on-going monitoring and membership termination. The objective would be to establish a due diligence process to ensure applicants meet ICE Clear Europe membership criteria and, once members, provide notifications of any changes to their business that could impact their ability to meet the criteria.

The Procedures would describe the Clearing Member application process, the consideration by relevant ICE Clear Europe departments, the process for approval or rejection of applications by the Executive Risk Committee under authority delegated by the Board and the right to appeal to the Board, additional membership conditions or criteria that the Clearing House may, at its discretion, require prior to approval and additional information requests that ICE Clear Europe may make during the application process. The Procedures would also describe the process for a Clearing Member to obtain membership to a different membership class and the procedure through which a Clearing Member may resign or be terminated by the Clearing House (both of which would be in accordance with Rule 209).

The Procedures would detail the core membership requirements, which would include minimum capital requirements as well as a description of additional financial requirements ICE

Clear Europe may impose and of certain aspects of the calculation of member capital, including the use of subordinated debt and controller guarantees where approved by ICE Clear Europe and the disallowance of certain assets from the calculation. The Procedures also reference Guaranty Fund contributions for CDS and F&O clearing services, including replenishments in the event of application of the funds; the margin-to-capital ratio requirement; (iv) default management capabilities; and (v) EOD price submissions (for CDS Clearing Members only) as required by the CDS EOD Price Discovery Policy.

The Procedures would further provide for a description of ongoing monitoring which would include: (i) Periodic review of the financial position and compliance with the relevant membership requirements of each Clearing Member; (ii) quarterly review of Clearing Member capital situation and monthly review of FCM/BD Clearing Members; (iii) the quarterly counterparty rating system report, which aggregates risk factors covering credit, market price, liquidity and operational risk for each Clearing Member; (iv) the watch list highlighting Clearing Members with special risk situations; (v) annual member returns pursuant to which Clearing Members must provide certain information to ICE Clear Europe; (vi) daily monitoring of Clearing Member performance in relation to fulfilment of obligations to cover cash payments, margin collateral and Guaranty Fund contributions as well as delivery obligations.

The Procedures would also set out the same governance requirements as those described above with respect to the Policy.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments are consistent with the requirements of Section 17A of the Act⁵ and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act⁶ requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest. The proposed Documents are intended generally to

more clearly document and consolidate the Clearing House's criteria for admitting and monitoring Clearing Members. In ICE Clear Europe's view the new documentation would facilitate implementation of the Clearing House's existing membership criteria as well as ongoing risk management with respect to Clearing Members by the Clearing House through monitoring of their particular situations. These amendments would therefore promote overall Clearing House risk management and facilitate the prompt and accurate clearing of cleared contracts and protect investors and the public interest in the sound operations of the Clearing House, consistent with the requirements of Section 17A(b)(3)(F).⁷ Further, the amendments will not affect the safeguarding of securities and funds in the custody or control of the Clearing House or for which it is responsible, within the meaning of Section 17A(b)(3)(F).

The proposed amendments to the Documents are further consistent with the risk management requirements of Rule 17Ad-22(e)(3)(i)⁸ as they relate to clearing membership. As noted above, the amendments would formalize and consolidate membership application and monitoring processes to ensure that Clearing Members meet admission criteria upon initial membership and continue to meet such criteria throughout their membership. The amendments will facilitate the Clearing House's ability to manage the potential risks posed by such Clearing Members.

Rule 17Ad-22(b)(7)⁹ requires clearing agencies to provide the ability to obtain

⁷ 15 U.S.C. 78q-1(b)(3)(F).

⁸ 17 CFR 240.17Ad-22(e)(3)(i)-(ii). The rule states that "[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: [m]aintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which:

(i) Includes risk management policies, procedures, and systems designed to identify, measure, monitor, and manage the range of risks that arise in or are borne by the covered clearing agency, that are subject to review on a specified periodic basis and approved by the board of directors annually;"

⁹ 17 CFR 240.17 Ad-22(b)(7). The rule states that "[a] registered clearing agency that performs central counterparty services shall establish, implement, maintain and enforce written policies and procedures reasonably designed to:

(7) Provide a person that maintains net capital equal to or greater than \$50 million with the ability to obtain membership at the clearing agency, provided that such persons are able to comply with other reasonable membership standards, with any net capital requirements being scalable so that they are proportional to the risks posed by the

⁵ 15 U.S.C. 78q-1.

⁶ 15 U.S.C. 78q-1(b)(3)(F).

membership to persons that maintain net capital equal to or greater than \$50 million, providing such persons can comply with other reasonable membership standards and that any net capital requirements be scalable so that they are proportional to the risks posed by the member's activities to the clearing agency. The Procedures do not change ICE Clear Europe's existing membership and minimum capital standards in this regard, but more clearly document those requirements and the process for monitoring compliance. The amendments are thus consistent with Rule 17Ad-22(b)(7).¹⁰

Rule 17Ad-22(e)(2)(i) and (v)¹¹ requires clearing agencies to establish reasonably designed policies and procedures to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility. The proposed Documents clearly define the roles and responsibilities of the document owner, the Head of Department, the senior members of the Risk Oversight Department and the senior members of the Compliance Department, consistent with governance arrangement for other ICE Clear Europe policies and procedures. ICE Clear Europe believes that the amendments to the Documents are therefore consistent with the requirements of Rule 17Ad-22(e)(2)(i) and (v).¹²

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed Documents would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The Documents are not changing existing membership criteria and would apply uniformly to all Clearing Members. As a result, ICE Clear Europe does not believe the

participant's activities to the clearing agency; provided, however, that the clearing agency may provide for a higher net capital requirement as a condition for membership at the clearing agency if the clearing agency demonstrates to the Commission that such a requirement is necessary to mitigate risks that could not otherwise be effectively managed by other measures and the Commission approves the higher net capital requirement as part of a rule filing or clearing agency registration application."

¹⁰ 17 CFR 240.17 Ad-22(b)(7).

¹¹ 17 CFR 240.17 Ad-22(e)(2). The rule states that "[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable:

(2) Provide for governance arrangements that:

(i) Are clear and transparent . . .

(v) Specify clear and direct lines of responsibility . . ."

¹² 17 CFR 240.17 Ad-22(e)(2).

amendments would affect the cost of clearing for Clearing Members or other market participants, the market for cleared services generally or access to clearing by Clearing Members or other market participants, or otherwise affect competition among Clearing Members or market participants in a manner not necessary or appropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed Documents have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any written comments received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an email to rule-comments@sec.gov. Please include File Number SR-ICEEU-2021-014 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-ICEEU-2021-014. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use

only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at <https://www.theice.com/clear-europe/regulation>. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ICEEU-2021-014 and should be submitted on or before September 8, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021-17671 Filed 8-17-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92651; File No. SR-NYSEArca-2021-28]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of ConvexityShares Daily 1.5x SPIKES Futures ETF Under NYSE Arca Rule 8.200-E (Trust Issued Receipts)

August 12, 2021.

I. Introduction

On May 13, 2021, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed

¹³ 17 CFR 200.30-3(a)(12).

with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b–4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the ConvexityShares Daily 1.5x SPIKES Futures ETF (“Fund”), a series of the ConvexityShares Trust (“Trust”), under NYSE Arca Rule 8.200–E, Commentary .02 (“Trust Issued Receipts”). The proposed rule change was published for comment in the **Federal Register** on May 26, 2021.³ On July 2, 2021, pursuant to Section 19(b)(2) of the 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 approve or disapprove the proposed rule change.⁵ On July 26, 2021, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.⁶ The

Commission has received no comments on the proposed rule change. The Commission is publishing this notice and order to solicit comments on Amendment No. 1 from interested persons, and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act⁷ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1⁸

The Exchange proposes to list and trade Shares of the Fund⁹ under NYSE Arca Rule 8.200–E, Commentary .02 which governs the listing and trading of Trust Issued Receipts¹⁰ on the Exchange. The Fund will be managed and controlled by ConvexityShares, LLC (“Sponsor”), a commodity pool operator.¹¹ Teucrium Trading, LLC, a commodity trading adviser registered with the Commodity Futures Trading Commission, will be the Sub-Adviser for the Fund (“Sub-Adviser”) and will manage the Fund’s commodity futures investment strategy.¹² U.S. Bank will

provide custody and fund accounting to the Trust and the Fund; U.S. Bancorp Fund Services will be the transfer agent for the Shares and administrator for the Fund; and Foreside will serve as the distributor for the Fund.

The Fund will seek daily investment results, before fees and expenses, that correspond to one-and-a-half times (1.5x) the performance of its benchmark index for a single day.¹³ The Fund is benchmarked to the T3 SPIKE Front 2 Futures Index (“Index”), an investable index of SPIKES futures contracts.¹⁴ The Index is intended to reflect the returns that are potentially available through an unleveraged investment in a theoretical portfolio of first- and second-month futures contracts on the SPIKES Volatility Index (“SPIKES Index”).¹⁵

dealer or becomes newly affiliated with a broker-dealer, or (b) any new Sub-Adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel of the broker-dealer or broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

¹³ A “single day” is measured from the time the Fund calculates its net asset value (“NAV”) to the time of the Fund’s next NAV calculation. The NAV calculation time for the Fund is typically 4:00 p.m. (Eastern Time).

¹⁴ The Index is sponsored by Triple Three Partners Pty Ltd, which licenses the use of the Index to its affiliated company, T3i Pty Ltd (Triple Three Partners Pty Ltd and T3i Pty Ltd. are collectively referred to herein as “T3 Index” or “Index Sponsor”). The Index Sponsor is affiliated with the Sponsor. The Index Sponsor has implemented and will maintain a fire wall regarding access to information concerning the composition of and/or changes to the Index. In addition, the Index Sponsor has implemented and will maintain procedures that are designed to prevent the use and dissemination of material, non-public information regarding the Index. The Index Sponsor is not registered as an investment adviser or broker-dealer and is not affiliated with any broker-dealers. The Index is calculated and published by Solactive AG, which is not affiliated with T3 Index.

¹⁵ The Exchange states that the SPIKES Index is a non-investable index that measures the implied volatility of the SPDR S&P 500 ETF Trust (“SPY”) over 30 days in the future. SPY is a unit investment trust that holds a portfolio of common stocks that closely tracks the price performance and dividend yield of the S&P 500 Composite Price Index (“S&P 500”). The SPIKES Index does not represent the actual or the realized volatility of SPY. The SPIKES Index is calculated based on the prices of a constantly changing portfolio of SPY put and call options. The SPIKES Index is reflective of the premium paid by investors for certain options linked to the level of the S&P 500. The SPIKES Index is a theoretical calculation and cannot be traded on a spot basis. T3 Index is the owner, creator and licensor of the SPIKES Index. The SPIKES Index is calculated, maintained and published by Miami International Securities Exchange, LLC via the Options Price Reporting Authority.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 91949 (May 20, 2021), 86 FR 28420.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 92320, 86 FR 36309 (July 9, 2021). The Commission designated August 24, 2021, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

⁶ In Amendment No. 1, the Exchange: (i) Stated that Teucrium Trading, LLC will be the Sub-Adviser for the Fund; (ii) represented that neither the Sponsor nor the Sub-Adviser (as such terms are defined below) is registered as a broker-dealer or affiliated with a broker-dealer and made additional representations with respect to firewalls; (iii) stated that the Sponsor or Sub-Adviser determines the type, quantity and mix of investments that the Sponsor or Sub-Adviser believes, in combination, should provide daily leveraged exposure to the Index (as defined below) to seek investment results equal to one-and-a-half times the performance of the Index; (iv) stated that the Sponsor or Sub-Adviser may cause the Fund to invest in VIX Related Positions (as defined below) if the market for a specific futures contract experiences emergencies or disruptions or in situations where the Sponsor or Sub-Adviser deems it impractical or inadvisable to buy or sell SPIKES futures contracts; (v) represented that (a) the Fund will attempt to limit counterparty risk in uncleared swap agreements by entering into such agreements only with counterparties the Sponsor and Sub-Adviser believes are creditworthy and by limiting the Fund’s exposure to each counterparty and (b) the Sponsor and Sub-Adviser will monitor the creditworthiness of each counterparty and the Fund’s exposure to each counterparty on an ongoing basis; (vi) stated that, with respect to halting trading in the Shares, the Exchange may consider (a) the extent to which trading is not occurring in the securities and/or the financial instruments composing the daily disclosed portfolio of the Fund; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present; (vii) represented that information regarding market price and trading volume for the Shares will

be continually available on a real-time basis throughout the day on brokers’ computer screens and other electronic services; and (viii) made technical, clarifying, and conforming changes. Amendment No. 1 is available at: <https://www.sec.gov/comments/sr-nysearca-2021-28/srnysearca202128-9090695-246773.pdf>.

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ Additional information regarding the Fund, the Trust, and the Shares, including investment strategies, creation and redemption procedures, and portfolio holdings can be found in Amendment No. 1, *supra* note 6.

⁹ On December 15, 2020, the Trust submitted to the Commission its draft registration statement on Form S–1 (“Registration Statement”) under the Securities Act of 1933 on a confidential basis. The Registration Statement for the Fund is not yet effective and the Exchange will not commence trading in Shares of the Fund until the Registration Statement becomes effective.

¹⁰ Commentary .02 to NYSE Arca Rule 8.200–E applies to Trust Issued Receipts that invest in “Financial Instruments.” The term “Financial Instruments,” as defined in Commentary .02(b)(4) to NYSE Arca Rule 8.200–E, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars, and floors; and swap agreements.

¹¹ The Sponsor is not registered as a broker-dealer or affiliated with a broker-dealer. In the event (a) the Sponsor becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new sponsor becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel of the broker-dealer or broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

¹² The Sub-Adviser is not registered as a broker-dealer or affiliated with a broker-dealer. In the event (a) the Sub-Adviser becomes registered as a broker-

The Index is comprised solely of SPIKES futures contracts.¹⁶ The Index employs rules for selecting the SPIKES futures contracts comprising the Index and a formula to calculate a level for the Index from the prices of these SPIKES futures contracts. Currently, the SPIKES futures contracts comprising the Index represent the prices of two near-term SPIKES futures contracts, replicating a position that rolls the nearest month SPIKES futures contracts to the next month SPIKES futures contracts at or close to the daily settlement price via a Trade-At-Settlement¹⁷ program towards the end of each business day in equal fractional amounts. This results in a constant weighted average maturity of one month.

The Fund will invest primarily in SPIKES futures contracts to gain the appropriate exposure to the Index. Under certain circumstances (described below), the Fund may also invest in futures contracts and swap contracts (“VIX Related Positions”) on the Cboe Volatility Index (“VIX”).¹⁸ The Exchange states that the VIX is an index that tracks volatility and would be expected to perform in a substantially similar manner as the SPIKES Index.

The Fund seeks to achieve its investment objective through the appropriate amount of exposure to the SPIKES futures contracts included in the Index. The Fund will not directly invest in the SPIKES Index. The Sponsor or Sub-Adviser determines the type, quantity and mix of investments that the Sponsor or Sub-Adviser believes, in combination, should provide daily leveraged exposure to the Index to seek investment results equal to one-and-a-half times the performance

¹⁶ According to the Exchange, SPIKES futures contracts were launched for trading by the Minneapolis Grain Exchange, LLC (“MGEX”) on December 14, 2020. While the SPIKES Index represents a measure of the expected 30-day volatility of SPY, the prices of SPIKES futures contracts are based on the current expectation of the expected 30-day volatility of SPY on the expiration date of the futures contract.

¹⁷ According to the Exchange, a Trade at Settlement (“TAS”) transaction is a transaction at a price equal to the daily settlement price, or at a specified differential above or below the daily settlement price. The TAS transaction price will be determined following execution and based upon the daily settlement price of the respective SPIKES futures contracts month. The permissible price range for permitted TAS transactions is from 0.50 index points below the daily settlement price to 0.50 index points above the daily settlement price. The permissible minimum increment for a TAS transaction is 0.01 index points. See MGEX Rule 83.15 at <http://www.mgex.com/documents/20210318-Rulebook.pdf>.

¹⁸ According to the Exchange, the VIX is a measure of estimated near-term future volatility based upon the weighted average of the implied volatilities of near-term put and call options on the S&P 500.

of the Index. In the event accountability rules, price limits, position limits, margin limits or other exposure limits are reached with respect to SPIKES futures contracts, or if the market for a specific futures contract experiences emergencies (e.g., natural disaster, terrorist attack or an act of God) or disruptions (e.g., a trading halt or a flash crash), or in situations where the Sponsor or Sub-Adviser deems it impractical or inadvisable to buy or sell SPIKES futures contracts (such as during periods of market volatility or illiquidity, or when trading in SPY is halted), the Sponsor or Sub-Adviser may cause the Fund to invest in VIX Related Positions. The Sponsor expects the Fund’s positions in VIX Related Positions to consist primarily of VIX futures contracts, which are traded on the Cboe Futures Exchange. However, in the event accountability rules, price limits, position limits, margin limits or other exposure limits are reached with respect to VIX futures contracts, or if the market for a specific VIX futures contract experiences emergencies or disruptions or in situations where the Sponsor or Sub-Adviser deems it impractical or inadvisable to buy or sell VIX futures contracts, the Fund would hold VIX swap agreements.¹⁹ The Fund will also hold cash or cash equivalents such as U.S. Treasury securities or other high credit quality, short-term fixed-income or similar securities (such as shares of money market funds) as collateral for investments and pending investments.

III. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEArca–2021–28, as Modified by Amendment No. 1, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act²⁰ to determine whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described

¹⁹ The Fund will attempt to limit counterparty risk in uncleared swap agreements by entering into such agreements only with counterparties the Sponsor and Sub-Adviser believes are creditworthy and by limiting the Fund’s exposure to each counterparty. The Exchange represents that the Sponsor and Sub-Adviser will monitor the creditworthiness of each counterparty and the Fund’s exposure to each counterparty on an ongoing basis.

²⁰ 15 U.S.C. 78s(b)(2)(B).

below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,²¹ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposal’s consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be “designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,” and “to protect investors and the public interest.”²²

Under the Commission’s Rules of Practice, the “burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.”²³ The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,²⁴ and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.²⁵

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to

²¹ *Id.*

²² 15 U.S.C. 78f(b)(5).

²³ 17 CFR 201.700(b)(3).

²⁴ *See id.*

²⁵ *See id.*

approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.²⁶

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved by September 8, 2021. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by September 22, 2021.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Amendment No. 1, in addition to any other comments they may wish to submit about the proposed rule change. In this regard, the Commission seeks commenters' views regarding whether the Exchange's proposal to list and trade the Shares, which seek to provide daily investment results that correspond to one-and-a-half times the return of an index designed to measure the daily performance of a theoretical portfolio of first- and second-month SPIKES futures contracts, is adequately designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest, 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-2021-28 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-2021-28. This file number should be included on the subject line if email is used. To help the Commission process and review your

²⁶ Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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-2021-28 and should be submitted by September 8, 2021. Rebuttal comments should be submitted by September 22, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-17670 Filed 8-17-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92649; File No. SR-NASDAQ-2021-045]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Modify Certain Pricing Limitations for Companies Listing in Connection With a Direct Listing Primary Offering

August 12, 2021.

On June 11, 2021, The Nasdaq Stock Market LLC ("Nasdaq" 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 allow companies to modify certain pricing limitations for companies listing in connection with a direct listing primary offering in which the company will sell shares itself in the opening auction on the first day of trading on Nasdaq. The proposed rule change was published for comment in the **Federal Register** on June 30, 2021.³

Section 19(b)(2) of the Act⁴ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is August 14, 2021. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the comments received. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,⁵ designates September 28, 2021 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-NASDAQ-2021-045).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-17668 Filed 8-17-21; 8:45 am]

BILLING CODE 8011-01-P

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 92256 (June 24, 2021), 86 FR 34815 (June 30, 2021). Comment received on the proposed rule change available at: <https://www.sec.gov/comments/sr-nasdaq-2021-045/srnasdaq2021045.htm>.

⁴ 15 U.S.C. 78s(b)(2).

⁵ *Id.*

⁶ 17 CFR 200.30-3(a)(31).

²⁷ 17 CFR 200.30-3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92657; File No. SR–NYSEARCA–2021–71]

Self-Regulatory Organizations; NYSEARCA, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.34–E

August 12, 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 August 4, 2021, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.34–E (Trading Sessions) to begin accepting orders 90 minutes before the Early Trading Session begins. 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 amend Rule 7.34–E (Trading Sessions) to begin accepting orders 90 minutes before the Early Trading Session begins.

Currently, Rule 7.34–E(a)(1) provides that the Early Trading Session will begin at 4:00 a.m. Eastern Time and conclude at the commencement of the Core Trading Session. The Rule further provides that the Exchange will begin accepting orders 30 minutes before the Early Trading Session begins and that the Early Open Auction will begin the Early Trading Session.

The Exchange proposes to amend Rule 7.34–E(a)(1) to provide that the Exchange would begin accepting orders 90 minutes before the Early Trading Session begins, *i.e.*, at 2:30 a.m. Eastern Time. The Exchange proposes to begin accepting orders earlier to compete with non-exchange trading venues that begin accepting orders before 3:30 a.m. Eastern Time. By moving the Exchange’s order acceptance time earlier, ETP Holders that route orders to multiple venues before 3:30 a.m. Eastern Time would be able to include the Exchange in their early morning routing determinations. The Exchange does not propose to change the time when the Early Trading Session would begin or make any other rule changes.

Because of the technology changes required to implement this change, subject to effectiveness of this proposed rule change, the Exchange will announce via Trader Update when the Exchange would begin accepting orders 90 minutes before the Early Trading Session begins, which the Exchange anticipates would be in August 2021.

2. Statutory Basis

For the reasons set forth above, the Exchange believes the proposed rule change is consistent with Section 6(b) of the Act⁴ in general, and furthers the objectives of Sections 6(b)(5) of the Act,⁵ in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would not change any trading functions on the Exchange and would only move up the time when the Exchange would begin accepting order flow for trading in the Early Trading Session. In addition, an ETP Holder that opts to send in orders during this earlier time period could, as today, designate which trading session such orders would be eligible to

trade, including per Rule 7.34–E(b), a trading session later in the trading day (“an order designated for a later trading session will be accepted but not eligible to trade until the designated trading session begins”) or choose to cancel such orders before they become eligible to trade. The Exchange further believes that the proposed rule change would promote competition among the Exchange and non-exchange venues because it would allow ETP Holders that currently route to non-exchange trading venues prior to 3:30 a.m. Eastern Time to include the Exchange in their early morning routing determinations.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change would promote intermarket competition between the Exchange and non-exchange trading venues that accept order flow before 3:30 a.m. Eastern Time.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁶ and Rule 19b–4(f)(6) thereunder.⁷ Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

The Exchange has asked the Commission to waive the 30-day operative delay.⁸ The Commission finds that waiving the 30-day operative delay is consistent with the protection of

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

⁷ 17 CFR 240.19b–4(f)(6).

⁸ 17 CFR 240.19b–4(f)(6)(iii).

investors and the public interest because waiver of the operative delay will allow ETP Holders that route orders to non-exchange venues that accept order flow before 3:30 a.m. Eastern Time the opportunity to include the Exchange in its early morning routing determinations. According to the Exchange, this proposed rule change will not change any Exchange trading functions, including when the Early Trading Session begins, and the technology to support this proposed rule change will be available less than 30 days after filing. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.⁹

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)¹⁰ 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-2021-71 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-2021-71. 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-2021-71 and should be submitted on or before September 8, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92648; File No. SR-NYSEARCA-2021-70]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Fees and Charges

August 12, 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 August 2, 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 amend the NYSE Arca Equities Fees and Charges ("Fee Schedule") to (1) modify the application of the per share fee for Tape B securities; (2) adopt increased credits and a cap applicable to the Step Up Tier 4 credit in Tape B securities; (3) eliminate a requirement to qualify for the Tape B Tier 2 credit; (4) adopt increased credits and a cap applicable to the Tape B Step Up Tier; and (5) adopt a new pricing tier, MPID Adding Tier, applicable to Tape A and Tape C securities. The Exchange proposes to implement the fee changes effective August 2, 2021. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to (1) modify the application of the per share fee for Tape B securities; (2) adopt increased credits and a cap applicable to the Step Up Tier 4 credit in Tape B securities; (3) eliminate a requirement to qualify for the Tape B Tier 2 credit; (4) adopt increased credits and a cap applicable to the Tape B Step Up Tier; and (5) adopt a new pricing tier, MPID Adding Tier, applicable to Tape A and Tape C securities.

⁹For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰15 U.S.C. 78s(b)(2)(B).

¹¹17 CFR 200.30-3(a)(12).

¹15 U.S.C. 78s(b)(1).

²15 U.S.C. 78a.

³17 CFR 240.19b-4.

The proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing orders by offering further incentives for ETP Holders⁴ to send additional liquidity to the Exchange.

The Exchange proposes to implement the fee changes effective August 2, 2021. Background

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁵

While Regulation NMS has enhanced competition, it has also fostered a “fragmented” market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that “such competition can lead to the fragmentation of order flow in that stock.”⁶ Indeed, equity trading is currently dispersed across 16 exchanges,⁷ numerous alternative trading systems,⁸ and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly available information, no single exchange currently has more than 17% market share.⁹ Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange currently has

less than 10% market share of executed volume of equities trading.¹⁰

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products. While it is not possible to know a firm’s reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which a firm routes order flow. With respect to non-marketable order flow that would provide liquidity on an Exchange against which market makers can quote, ETP Holders can choose from any one of the 16 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide liquidity on an exchange.

Proposed Rule Change

Tape B

Currently, for Exchange Transactions, under Section III (Standard Rates—Transactions), the Exchange charges a fee of \$0.0012 per share for Closing Orders¹¹ in securities priced at or above \$1.00.¹² Pursuant to footnote (f), this fee currently applies to orders in Tape A Securities, Tape C Securities and NYSE Arca primary listed securities (includes all ETFs/ETNs). The Exchange currently does not charge this fee for orders in securities whose primary market is NYSE American LLC (“NYSE American”) or Cboe BZX Exchange, Inc. (“Cboe BZX”). The Exchange proposes to modify the application of this fee by amending the text of footnote (f) so that the fee would apply to all securities, *i.e.*, Tape A, Tape B and Tape C securities. The purpose of the proposed fee change is to simplify the Fee Schedule and maintain consistency with respect to the fee charged by the Exchange when it executes Closing Orders in all securities.

Similarly, for Exchange Transaction[sic], under Section VI (Tier Rates—Round Lots and Odd Lots (Per Share Price \$1.00 or Above)), the Exchange currently charges a fee of \$0.0010 per share for Market, Market-On-Close, Limit-On-Close, and Auction-Only Orders executed in a Closing

Auction in NYSE Arca Primary listed securities (includes all ETFs/ETNs). This fee is applicable under Tier 1 and Tier 2 pricing tiers.

The Exchange currently does not charge this fee for orders in securities whose primary market is NYSE American or Cboe BZX. The Exchange proposes to modify the application of this fee by deleting the words “in NYSE Arca primary listed securities (includes all ETFs/ETNs)” in Tier 1 and Tier 2 so that the fee would apply to all Tape B securities. The purpose of the proposed fee change is to simplify the Fee Schedule and maintain consistency with respect to the fee charged by the Exchange when it executes Closing Orders in all Tape B securities.

Step Up Tier 4

The proposed rule change is designed to be available to all ETP Holders on the Exchange and is intended to provide ETP Holders an opportunity to receive enhanced rebates by executing more of their orders in Tape B securities on the Exchange.

The Exchange currently has multiple levels of step-up pricing tiers, Step Up Tiers 1—5, which are designed to encourage ETP Holders that provide displayed liquidity on the Exchange to increase that order flow, which would benefit all ETP Holders by providing greater execution opportunities on the Exchange. In order to provide an incentive for ETP Holders to direct providing displayed order flow to the Exchange, the credits increase in the various tiers based on increased levels of volume directed to the Exchange.

Currently, the following credits are available to ETP Holders that provide increased levels of displayed liquidity on the Exchange:

Tier	Credit for providing displayed liquidity
Step Up Tier	\$0.0030 (Tape A). \$0.0023 (Tape B). \$0.0031 (Tape C).
Step Up Tier 2 ..	\$0.0028 (Tape A and C). \$0.0022 (Tape B).
Step Up Tier 3 ..	\$0.0025 (Tape A and C). \$0.0022 (Tape B).
Step Up Tier 4 ..	\$0.0033 (Tape A and C). \$0.0034 (Tape B).
Step Up Tier 5 ..	\$0.0032 (Tape A, B and C).

Under the Step Up Tier 4, if an ETP Holder increases its providing liquidity on the Exchange by a specified percentage over the level that such ETP Holder provided liquidity in September 2019, it is eligible to earn higher credits. Specifically, to qualify for the credits under Step Up Tier 4, an ETP Holder

⁴ All references to ETP Holders in connection with this proposed fee change include Market Makers.

⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7-10-04) (Final Rule) (“Regulation NMS”).

⁶ See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7-02-10) (Concept Release on Equity Market Structure).

⁷ See Cboe U.S Equities Market Volume Summary, available at https://markets.cboe.com/us/equities/market_share. See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html>.

⁸ See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atstlist.htm>.

⁹ See Cboe Global Markets U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

¹⁰ See *id.*

¹¹ Under Section I (Definitions) of the Fee Schedule, the term Closing Orders means Market, Market-On-Close, Limit-On-Close, and Auction-Only Orders executed in a Closing Auction.

¹² For Retail Orders in securities priced at or above \$1.00, this fee is \$0.0008 per share, and for securities priced below \$1.00, this fee is 0.1% of Dollar Value.

must directly execute providing average daily volume (ADV) per month that is an increase of no less than 0.40% of US CADV for that month over the ETP Holder's providing ADV in September 2019, taken as a percentage of US CADV.

If an ETP Holder meets the Step Up Tier 4 requirement, such ETP Holder is currently eligible to earn a credit of:

- \$0.0033 per share for orders that provide displayed liquidity in Tape A and Tape C Securities, and
- \$0.0034 per share for orders that provide displayed liquidity in Tape B Securities.¹³

ETP Holders that qualify for Step Up Tier 4 do not receive any additional incremental Tape B Tier credits for providing displayed liquidity, including any incremental credits associated with Less Active ETP Securities and are currently capped at \$0.0034 per share.¹⁴ With this proposed rule change, the Exchange proposes to modify the cap applicable to the Step Up Tier 4 credit in Tape B securities. As proposed, an ETP Holder that is registered as a Lead Market Maker can receive up to a combined credit of \$0.0036 per share on all its adding volume in Tape B Securities if that ETP Holder, together with its affiliates,¹⁵ executes providing ADV in Tape B Securities that is at least 40% over the ETP Holder's providing ADV in Q3 2019, as a percentage of US Tape B CADV.

The purpose of the proposed rule change is to incentivize ETP Holders to register as Lead Market Makers and generally to incentivize order flow providers to send liquidity-providing orders to the Exchange while capping the level of credit that such participants would receive. The Exchange believes that, although it is proposing to continue to limit the financial incentive for orders that provide displayed liquidity in Tape B securities, the current rebate, *i.e.*, \$0.0034 per share, is among one of the highest credits paid by the Exchange and should continue to serve as an incentive for ETP Holders to direct displayed liquidity providing orders to the Exchange.

¹³ See Securities Exchange Act Release Nos. 86122 (June 17, 2019), 84 FR 29258 (June 21, 2019) (SR-NYSEArca-2019-43); 87292 (October 11, 2019), 84 FR 55603 (October 17, 2019) (SR-NYSEArca-2019-70); and 88833 (May 7, 2020), 85 FR 28676 (May 13, 2020) (SR-NYSEArca-2020-39).

¹⁴ See Securities Exchange Act Release Nos. 88436 (March 20, 2020), 85 FR 17112 (March 26, 2020) (SR-NYSEArca-2020-21); and 88833 (May 7, 2020), 85 FR 28676 (May 13, 2020) (SR-NYSEArca-2020-39).

¹⁵ The term "affiliate" means any ETP Holder under 75% common ownership or control of that ETP Holder. See Fee Schedule, NYSE Arca Marketplace: General, Section II. Aggregate Billing of Affiliated ETP Holders.

Tape B Tier 2

Currently, under the Tape B Tier 2 pricing tier, an ETP Holder could qualify for a credit of \$0.0028 per share¹⁶ if such ETP Holder, on a daily basis, measured monthly, directly executes providing volume in Tape B Securities during the billing month ("Tape B Adding ADV") that is either (1) equal to at least 1.0% of the US Tape B CADV or (2) equal to at least 0.20% of the US Tape B CADV for the billing month over the ETP Holder's or Market Maker's Q2 2015 Tape B Adding ADV taken as a percentage of Tape B CADV or (3) equal to at least 0.25% of the US Tape B CADV for the billing month over the ETP Holder's or Market Maker's April 2020 Tape B Adding ADV taken as a percentage of Tape B CADV.

The Exchange proposes to eliminate the second requirement above which requires an ETP Holder to execute providing volume in Tape B Securities equal to at least 0.20% of the US Tape B CADV for the billing month over the ETP Holder's or Market Maker's Q2 2015 Tape B Adding ADV taken as a percentage of Tape B CADV. The Exchange has observed that, over the last 6 months, not a single ETP Holder has qualified for the Tape B Tier 2 credit by utilizing the requirement that the Exchange is proposing to eliminate. Given that this requirement has not served to meaningfully increase activity on the Exchange, the Exchange has determined to eliminate it from the Fee Schedule. The Exchange is not proposing any other change to the Tape B Tier 2 pricing tier.

With this proposed rule change, ETP Holders would continue to be able to qualify for the Tape B Tier 2 credit of \$0.0028 per share for providing liquidity in Tape B Securities if such ETP Holder, on a daily basis, measured monthly, directly executes Tape B Adding ADV that is either (1) equal to at least 1.0% of the US Tape B CADV or (2) equal to at least 0.25% of the US Tape B CADV for the billing month over the ETP Holder's or Market Maker's April 2020 Tape B Adding ADV taken as a percentage of Tape B CADV.

The Exchange believes that eliminating a requirement that has become underutilized will also streamline the Fee Schedule. The Exchange further believes that the remaining requirements will continue to incentivize ETP Holders to submit liquidity providing orders in Tape B Securities to qualify for the Tape B Tier 2 credit. The Exchange is not proposing

¹⁶ Under the Standard Rates, ETP Holders receive a credit of \$0.0020 per share for Tape B orders that provide liquidity.

any change to the level of Tape B Tier 2 credit.

Tape B Step Up Tier

Currently, ETP Holders that meet the requirement under Tape B Step Up Tier can earn the following incremental credits:

- An incremental credit of \$0.0002 per share when an ETP Holder's providing ADV in Tape B Securities during the billing month is at least 0.50% of the US Tape B CADV and the ETP Holder's providing ADV in Tape B Securities during the billing month as a percentage of US Tape B CADV is at least 20% more but less than 30% of the ETP Holder's providing ADV as a percentage of US Tape B CADV in 3Q 2019;

- An incremental credit of \$0.0003 per share when an ETP Holder's providing ADV in Tape B Securities during the billing month is at least 0.50% of the US Tape B CADV and the ETP Holder's providing ADV in Tape B Securities during the billing month as a percentage of US Tape B CADV is at least 30% more but less than 40% of the ETP Holder's providing ADV as a percentage of US Tape B CADV in 3Q 2019; and

- An incremental credit of \$0.0004 per share when an ETP Holder's providing ADV in Tape B Securities during the billing month is at least 0.50% of the US Tape B CADV and the ETP Holder's providing ADV in Tape B Securities during the billing month as a percentage of US Tape B CADV is at least 40% more than the ETP Holder's providing ADV as a percentage of US Tape B CADV in 3Q 2019.¹⁷

The incremental credits are payable in addition to the ETP Holder's Tiered or Standard credit(s); provided, however, that such combined credit(s) in Tape B Securities currently cannot exceed \$0.0032 per share.

The Exchange proposes to adopt an increased cap applicable under the Tape B Step Up Tier pricing tier. As proposed, if an ETP Holder's providing ADV increases at least 150% over the ETP Holder's providing ADV in Q3 2019, then the ETP Holder can receive a combined credit of up to:

- \$0.0033 per share if the ETP Holder is registered as a Lead Market Maker or Market Maker in at least 150 Less Active ETPs in which it meets at least two Performance Metrics, and has Tape B Adding ADV equal to at least 0.65% of US Tape B CADV, or

- \$0.0034 per share if the ETP Holder or Market Maker is registered as a Lead

¹⁷ See Securities Exchange Act Release No. 87292 (October 11, 2019), 84 FR 55603 (October 17, 2019) (SR-NYSEArca-2019-70).

Market Maker or Market Maker in at least 200 Less Active ETPs in which it meets at least two Performance Metrics, and has Tape B Adding ADV equal to at least 0.70% of US Tape B CADV.

For example, assume an ETP Holder has providing ADV of 1.20% of Tape B CADV in Tape B securities in the baseline period of third quarter of 2019. Further assume that the same ETP Holder has providing ADV of Tape B CADV of 1.80% in Tape B securities in the billing month. The ETP Holder in this example would qualify for an incremental credit of \$0.0004 per share because the ETP Holder has providing ADV in Tape B Securities during the billing month of 1.80%, which is at least 0.50% of the US Tape B CADV, and because the ETP Holder has providing ADV of Tape B CADV of 1.80%, which is at least 40% more than the ETP Holder's baseline ADV of 1.20% of Tape B CADV. Also assume further that the ETP Holder is registered as a Lead Market Maker or Market Maker in 150 Less Active ETPs in which it meets at least two Performance Metrics.

In the above example, the ETP Holder would also qualify for the existing Tape B Tier 1 credit of \$0.0030 per share by meeting the 1.5% of the US Tape B CADV requirement, for a total credit of \$0.0034 per share (\$0.0030 per share plus \$0.0004 per share). Given the cap currently in place, the ETP Holder's combined credit would be reduced to \$0.0032 per share. However, since the ETP Holder is registered as a Lead Market Maker or Market Maker in at least 150 Less Active ETPs in which it meets at least two Performance Metrics, under the proposed rule change, the ETP Holder would receive a combined credit of \$0.0033 per share. If the ETP Holder was registered as a Lead Market Maker or Market Maker in 200 Less Active ETPs in which it met at least two Performance Metrics, under the proposed rule change, ETP Holder would receive a combined credit of \$0.0034 per share. Under both scenarios, the ETP Holder meets the Tape B Adding ADV requirement of 0.70% of US Tape B CADV for the \$0.0034 per share cap.

As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable, providing liquidity that would be displayed on the Exchange. The purpose of this proposed rule change is to provide an incentive to ETP Holders to register as Lead Market Makers or Market Makers in Less Active ETPs and to incentivize such liquidity providers to increase the orders sent to the Exchange.

MPID Adding Tier

The Exchange proposes to adopt a new pricing tier, MPID Adding Tier, that would offer a per share credit for orders that provide liquidity in Tape A and Tape C securities. As proposed, to qualify for the proposed pricing tier, an MPID would be required to execute providing ADV in all securities that is at least 2 times more than its providing ADV in 2Q 2021, as a percentage of US CADV. A qualifying MPID would receive a credit for providing liquidity in Tape A and Tape C securities of \$0.0028 per share if the MPID has least 4 million shares of providing ADV during the billing month, or \$0.0029 per share if the MPID has at least 9 million shares of providing ADV during the billing month.

For example, assume an MPID has providing ADV of 2 million shares of Tape A, Tape B and Tape C securities in the baseline period of 2Q 2021. Further assume that the same MPID has providing ADV of 4 million shares in the billing month, which is 2 times more than the baseline ADV of 2 million shares. Under the proposed rule change, the MPID would receive a credit of \$0.0028 per share for adding liquidity in Tape A and Tape C securities. If instead the MPID has providing ADV of 9 million shares in the billing month, which is 4.5 times more than the baseline period, then the MPID would receive a credit of \$0.0029 per share for adding liquidity in Tape A and Tape C securities.

The proposed rule change is designed to incentivize ETP Holders to increase liquidity-providing orders in Tape A and Tape C securities they send to the Exchange, which would support the quality of price discovery on the Exchange and provide additional liquidity for incoming orders. As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable, which add liquidity to the Exchange. Because the proposed tier requires an ETP Holder's MPID to increase the volume of its trades in orders that add liquidity over the MPID's 2Q 2021 baseline, the Exchange believes that the proposed credits would provide an incentive for all ETP Holders to send additional liquidity to the Exchange in order to qualify for them.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁸ in general, and furthers the objectives of Sections

6(b)(4) and (5) of the Act,¹⁹ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Fee Change Is Reasonable

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."²⁰

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue to reduce use of certain categories of products, in response to fee changes. With respect to non-marketable order which provide liquidity on an Exchange, ETP Holders can choose from any one of the 16 currently operating registered exchanges to route such order flow. Accordingly, competitive forces reasonably constrain exchange transaction fees that relate to orders that would provide displayed liquidity on an exchange. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

Tape B

The Exchange believes the proposed amendment to the Tape B fees is reasonable because it seeks to standardize the fee for Tape B securities. The Exchange periodically reviews its fees and rebates and determined that it does not currently charge a fee for Closing Orders in Tape B securities whose primary market is NYSE American or Cboe BZX, nor does the Exchange currently charge for Market, Market-On-Close, Limit-On-Close, and Auction-Only Orders executed in a Closing Auction for securities whose primary market is NYSE American or Cboe BZX. The Exchange believes it is

¹⁹ 15 U.S.C. 78f(b)(4) and (5).

²⁰ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹⁸ 15 U.S.C. 78f(b).

reasonable to charge the same fee for all Tape B securities.

Step Up Tier 4

The Exchange believes the proposed rule change to adopt an increased cap on the credit applicable to the Step Up Tier 4 credit in Tape B securities is reasonable because the increased credit, which would be among the highest paid by the Exchange, outside of Lead Market Maker credits for adding liquidity, would serve to incentivize ETP Holders to increase their participation on the Exchange as Lead Market Makers and execute a greater number of orders in Tape B securities on the Exchange. The Exchange believes the increased credits would continue to encourage ETP Holders to submit additional liquidity to a national securities exchange and to participate as a Lead Market Maker or Market Maker. The Exchange believes it is reasonable to require ETP Holders to meet the applicable volume threshold to qualify for the increased credits. Submission of additional liquidity to the Exchange would promote price discovery and transparency and enhance order execution opportunities for ETP Holders from the substantial amounts of liquidity present on the Exchange. The Exchange notes that the requirement to execute providing ADV that is at least 40% over the ETP Holder's or Market Maker's providing ADV in Q3 2019 is the same as the requirement to achieve the top incremental credit for Tape B Step Up Tier. The Exchange believes that adopting an identical requirement would provide ETP Holders a further incentive to provide additional liquidity in Tape B Securities. Additionally, the Exchange believes that utilizing the same baseline as Tape B Step Up Tier would make it easier for firms to monitor their providing ADV for both tiers, as opposed to introducing a new baseline. All ETP Holders would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities.

Tape B Tier 2

The Exchange believes that the proposed rule change to eliminate one of the requirements to qualify for the Tape B Tier 2 credit is reasonable because the requirement proposed for deletion has been underutilized and has generally not incentivized ETP Holders to bring liquidity and increase trading on the Exchange.

In the last 6 months, no ETP Holder has availed itself of the Tape B Tier 2 by meeting the requirement proposed for deletion. The Exchange does not

anticipate any ETP Holder in the near future to qualify for the Tape B Tier 2 credit by meeting the requirement proposed for deletion. The Exchange believes it is reasonable to eliminate requirements within pricing tiers when they become underutilized. The Exchange believes eliminating underutilized tier requirements would also simplify the Fee Schedule. The Exchange further believes that removing reference to underutilized tier requirements that the Exchange proposes to eliminate from the Fee Schedule would also add clarity to the Fee Schedule.

Tape B Step Up Tier

The Exchange believes the proposed rule change to modify the credit and the cap applicable under the Tape B Step Up Tier for Tape B securities is a reasonable means of attracting additional liquidity to the Exchange. The Exchange believes the modified credits, which are among the highest paid by the Exchange, would continue to encourage ETP Holders to submit additional liquidity to a national securities exchange. The Exchange believes it is reasonable to require ETP Holders to meet the applicable volume threshold to qualify for the increased credits, given the higher combined credit of \$0.0033 per share and \$0.0034 per share the Exchange would pay if the tier criteria is met. Submission of additional liquidity to the Exchange would promote price discovery and transparency and enhance order execution opportunities for ETP Holders from the substantial amounts of liquidity present on the Exchange. The Exchange also believes it is reasonable to require ETP Holders be registered as a Lead Market Maker or Market Maker in a minimum number [sic] Less Active ETPs and to meet at least two Performance Metrics in such securities as the Exchange believes this requirement would enhance market quality in Less Active ETPs and support the quality of price discovery in such securities. All ETP Holders would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities.

MPID Adding Tier

The Exchange believes the proposed MPID Adding Tier is a reasonable means to encourage ETP Holders to increase their liquidity providing orders in Tape A and Tape C securities each month over a predetermined baseline by offering liquidity providers an opportunity to receive an enhanced rebate. Further, the Exchange believes

it's reasonable to provide the proposed credit to the qualifying MPID if it meets the tier's criteria because this would encourage individual MPIDs to send orders that provide liquidity to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants, and promoting price discovery and transparency. Since the proposed tier would be new, no ETP Holder's MPID currently qualifies for the proposed pricing tier. As previously noted, without a view of ETP Holder activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether the proposed rule change would result in any ETP Holder's MPID qualifying for the tier. The Exchange believes the proposed credit is reasonable as it would provide an additional incentive for an ETP Holder's MPID to direct its order flow to the Exchange and provide meaningful added levels of liquidity in order to qualify for the proposed credit, thereby contributing to depth and market quality on the Exchange.

As noted above, the Exchange operates in a highly competitive environment, particularly for attracting order flow that provides displayed liquidity on an exchange. More specifically, the Exchange notes that greater add volume order flow may provide for deeper, more liquid markets and execution opportunities at improved prices, which the Exchange believes incentivizes liquidity providers to submit additional liquidity and enhance execution opportunities. This overall increase in activity would deepen the Exchange's liquidity pool, offer additional cost savings, support the quality of price discovery, promote market transparency and improve market quality, for all investors. The Exchange believes it is reasonable to provide higher credits in Tape A and Tape C securities to incentivize liquidity adding orders in those securities, and not in Tape B securities, because Tape A and Tape C securities are non-NYSE Arca-listed securities and do not have Lead Market Makers or Market Makers to provide additional liquidity. The Exchange notes that other markets with which the Exchange competes currently offer its members an opportunity to earn rebates based on the activity of the member's MPID.²¹ The Exchange believes the proposed new pricing tier continues to be a reasonable

²¹ See BZX Fee Schedule, Footnote 2, Step Up Tiers, and Footnote 4, Single Investor MPID Tiers, at https://www.cboe.com/us/equities/membership/fee_schedule/bzx/.

means to encourage ETP Holders to increase their liquidity on the Exchange.

The Proposed Fee Change is an Equitable Allocation of Fees and Credits

The Exchange believes its proposal equitably allocates its fees among its market participants.

Tape B

The Exchange believes that the proposed rule change constitutes an equitable allocation of reasonable fees because the proposed fee is comparable to the fee charged by the Exchange for the same activity in NYSE Arca-listed securities and would apply equally to all ETP Holders that choose to execute their orders in Tape B securities on the Exchange. The proposed change may impact the submission of orders to a national securities exchange, and to the extent that ETP Holders continue to submit such orders to the Exchange, the proposed rule change would not have a negative impact to ETP Holders trading on the Exchange because the proposed fee would be in line with the fee currently charged by the Exchange for trading in NYSE Arca-listed securities. However, without having a view of ETP Holder's activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in a change in trading behavior by ETP Holders.

Step Up Tier 4

The Exchange believes the proposed amendment to the credit and the cap under Step Up Tier 4 equitably allocates its fees and credits among market participants because it is reasonably related to the value of the Exchange's market quality associated with higher equities volume. The Exchange believes the proposed increased credits, which would be among the highest paid by the Exchange, would provide an incentive for ETP Holders to increase their participation as Lead Market Makers on the Exchange and execute a greater amount of their orders in Tape B securities on the Exchange. The Exchange believes the proposed increased credits would continue to encourage ETP Holders to send orders that add liquidity to the Exchange, thereby contributing to robust levels of liquidity for the benefit all market participants. The Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and attract more liquidity to the Exchange. ETP Holders that currently qualify for credits associated with Step Up pricing tiers on the Exchange will continue to receive

credits when they provide liquidity to the Exchange. The Exchange believes that recalibrating the requirements for providing liquidity will continue to attract order flow and liquidity to the Exchange for the benefit of investors generally.

Tape B Tier 2

The Exchange believes that the proposed rule change to eliminate one of the requirements to qualify for the Tape B Tier 2 credit is an equitable allocation of its fees and credits. The Exchange believes that eliminating a tier requirement from the Fee Schedule when such requirement becomes underutilized is equitable because the requirement would be eliminated in its entirety and would no longer be available to any ETP Holder.

Tape B Step Up Tier

The Exchange believes the proposed amendment to the credit and the cap under the Tape B Step Up Tier equitably allocates its fees and credits among market participants because it is reasonably related to the value of the Exchange's market quality associated with higher equities volume. As proposed, the Exchange would provide qualifying ETP Holders with some of the highest credits payable by the Exchange provided they participate as Lead Market Makers and provide increased Tape B adding ADV. The more an ETP Holder participates, the greater the credit they would receive. The Exchange believes the proposed credits would encourage ETP Holders to send orders that add liquidity to the Exchange, thereby contributing to robust levels of liquidity, which would benefit all market participants.

MPID Adding Tier

The Exchange believes that the proposed adoption of the MPID Adding Tier represents an equitable allocation of fees because all ETP Holders will be eligible for the proposed pricing tier and have the opportunity to meet the tier's criteria and receive the applicable rebate if such criteria is met. That is, the proposed pricing tier is designed as an incentive to any and all liquidity providers interested in meeting the tier criteria to submit additional order flow to the Exchange and each will receive the proposed rebate if the tier criteria is met. While the Exchange has no way of knowing whether this proposed rule change would definitively result in any particular ETP Holder qualifying for the proposed pricing tier, the Exchange anticipates a number of ETP Holders would be able to meet, or will reasonably be able to meet, the proposed

criteria. However, without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any ETP Holder qualifying for the proposed tier. The Exchange also notes that the proposed change will not adversely impact any ETP Holder's pricing or their ability to qualify for other rebate tiers. Rather, should an ETP Holder not meet the proposed criteria, the ETP Holder will merely not receive the corresponding rebate.

The Proposed Fee Change Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, ETP Holders are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

Tape B

The proposal to amend the Tape B fees is not unfairly discriminatory because the fee would be applied on an equal basis to all ETP Holders that choose to send their orders in Tape B securities to the Exchange. Additionally, the proposed rule change neither targets nor will it have a disparate impact on any particular category of market participant. The proposal does not permit unfair discrimination because the proposed fees would be applied to all ETP Holders, who would all be charged the same fee on an equal basis. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by this allocation of fees.

Step Up Tier 4

The Exchange believes it is not unfairly discriminatory to cap the increased credit payable under Step Up Tier 4 for providing displayed liquidity in Tape B securities because the proposed credit and cap would be applied on an equal basis to all ETP Holders, who would all be subject to the proposed change on an equal basis. Additionally, the proposal neither targets nor will it have a disparate impact on any particular category of market participant. The proposal does not permit unfair discrimination because the proposed change would be applied to all ETP Holders, who would all be subject to the proposed change on an equal basis. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by this allocation of fees.

Tape B Tier 2

The Exchange believes that the proposed rule change to eliminate one of the requirements to qualify for the Tape B Tier 2 credit is not unfairly discriminatory. The Exchange believes that eliminating a tier requirement from the Fee Schedule when such requirement becomes underutilized is equitable and not unfairly discriminatory because the requirement would be eliminated in its entirety and would no longer be available to any ETP Holder. Additionally, the proposed rule change neither targets nor will it have a disparate impact on any particular category of market participant.

Tape B Step Up Tier

The Exchange believes it is not unfairly discriminatory to modify and cap the credit payable under Tape B Step Up Tier 4 for providing displayed liquidity in Tape B securities because the proposed increased cap would be applied on an equal basis to all ETP Holders, who would all be subject to the proposed cap on an equal basis. Additionally, the proposal neither targets nor will it have a disparate impact on any particular category of market participant. The proposal does not permit unfair discrimination because the proposed cap would be applied to all ETP Holders, who would all be subject to the cap on an equal basis.

MPID Adding Tier

The Exchange believes it is not unfairly discriminatory to provide the proposed credit as the credit would be provided on an equal basis to all ETP Holders that add liquidity by meeting the new proposed MPID Adding Tier's requirements. The Exchange also believes that the proposed change is not unfairly discriminatory because it is reasonably related to the value to the Exchange's market quality associated with higher volume. The proposed new tier is designed as an incentive to any and all ETP Holders interested in meeting the tier criteria to submit additional order flow to the Exchange and each will receive the proposed rebate if the tier criteria is met. The Exchange also notes that the proposed change will not adversely impact any ETP Holder's pricing or their ability to qualify for other tiers. Rather, should an ETP Holder not meet the criteria of the proposed new pricing tier, the ETP Holder will merely not receive the corresponding rebate.

* * * * *

In the prevailing competitive environment, ETP Holders are free to

disfavor the Exchange's pricing if they believe that alternatives offer them better value. Moreover, this proposed rule change neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that this proposal does not permit unfair discrimination because the changes described in this proposal would be applied to all similarly situated ETP Holders and all ETP Holders would be subject to the same requirements. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by the proposed allocation of fees. The Exchange further believes that the proposed changes would not permit unfair discrimination among ETP Holders because the standard and tiered rates are available equally to all ETP Holders.

Finally, the submission of orders to the Exchange is optional for ETP Holders in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard. The Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

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,²² 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. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for ETP Holders. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."²³

Intramarket Competition. The Exchange believes the proposed amendments to its Fee Schedule would not impose any burden on competition

that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or its competitors. The proposed changes are designed to attract additional order flow to the Exchange. The Exchange believes that the proposed adoption of a new pricing tier and amending credits associated with established tiers would incentivize market participants to direct liquidity adding order flow to the Exchange, bringing with it additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality and continuing to encourage ETP Holders to send orders, thereby contributing towards a robust and well-balanced market ecosystem. The Exchange also does not believe the proposed rule change to eliminate underutilized requirements to qualify for a pricing tier will impose any burden on intramarket competition because the proposed change would impact all ETP Holders uniformly (*i.e.*, the requirement will not be available to any ETP Holder).

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange's market share of intraday trading (*i.e.*, excluding auctions) is currently less than 10%. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

²² 15 U.S.C. 78f(b)(8).

²³ See Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

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)²⁴ of the Act and subparagraph (f)(2) of Rule 19b-4²⁵ 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)²⁶ 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-2021-70 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-2021-70. 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-2021-70, and should be submitted on or before September 8, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021-17667 Filed 8-17-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92655; File No. SR-Phlx-2021-43]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing of Proposed Rule Change To Permit Monday and Wednesday Expirations for Options Listed Pursuant to the Short Term Option Series Program on the iShares Russell 2000 ETF ("IWM")

August 12, 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 August 6, 2021, Nasdaq PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and

III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to permit Monday and Wednesday expirations for options listed pursuant to the Short Term Option Series Program on the iShares Russell 2000 ETF.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/phlx/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 Phlx Options 4, Section 5 at Supplementary Material .03 to permit Monday and Wednesday expirations for options listed pursuant to the Short Term Option Series Program ("Program") on the iShares Russell 2000 ETF ("IWM").

A Short Term Option Series means a series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Monday, Tuesday, Wednesday, Thursday or Friday that is a business day and that expires on the Monday, Wednesday or Friday of the next business week, or, in the case of a series that is listed on a Friday and expires on a Monday, is listed one business week and one business day prior to that expiration.³ The Exchange

²⁴ 15 U.S.C. 78s(b)(3)(A).

²⁵ 17 CFR 240.19b-4(f)(2).

²⁶ 15 U.S.C. 78s(b)(2)(B).

²⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Options 1, Section 1(b)(53) provides the term "Short Term Option Series" a series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading

proposes to amend Phlx Options 4, Section 5 at Supplementary Material .03 to permit the listing of options series that expire on Mondays and Wednesdays in IWM.

Monday Expirations

As proposed, with respect to Monday IWM Expirations within Supplementary Material .03 to Options 4, Section 5, the Exchange may open for trading on any Friday or Monday that is a business day series of options on IWM to expire on any Monday of the month that is a business day and is not a Monday in which Quarterly Options Series on the same class expire ("Monday IWM Expirations"), provided that Monday IWM Expirations that are listed on a Friday must be listed at least one business week and one business day prior to the expiration. The Exchange may list up to five consecutive Monday IWM Expirations at one time; the Exchange may have no more than a total of five Monday IWM Expirations.

Wednesday Expirations

As proposed, with respect to Wednesday IWM Expirations within Supplementary Material .03 to Options 4, Section 5, the Exchange may open for trading on any Tuesday or Wednesday that is a business day series of options on IWM to expire on any Wednesday of the month that is a business day and is not a Wednesday in which Quarterly Options Series on the same class expire ("Wednesday IWM Expirations"). The Exchange may list up to five consecutive Wednesday IWM Expirations at one time; the Exchange may have no more than a total of five Wednesday IWM Expirations and a total of five Wednesday IWM Expirations will be subject to the provisions of this Rule.

Monday and Wednesday Expirations

The interval between strike prices for the proposed Monday and Wednesday IWM Expirations will be the same as those for the current Short Term Option Series for Wednesday and Friday

on any Monday, Tuesday, Wednesday, Thursday or Friday that is a business day and that expires on the Monday, Wednesday or Friday of the next business week, or, in the case of a series that is listed on a Friday and expires on a Monday, is listed one business week and one business day prior to that expiration. If a Tuesday, Wednesday, Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Tuesday, Wednesday, Thursday or Friday, respectively. For a series listed pursuant to this section for Monday expiration, if a Monday is not a business day, the series shall expire on the first business day immediately following that Monday.

expirations applicable to the Program.⁴ Specifically, the Monday and Wednesday IWM Expirations will have a \$0.50 strike interval minimum.⁵ As is the case with other equity options series listed pursuant to the Program, the Monday and Wednesday IWM Expiration series will be P.M.-settled.

Pursuant to Options 1, Section 1(b)(53), with respect to the Program, if Monday is not a business day the series shall expire on the first business day immediately following that Monday. This procedure differs from the expiration date of Wednesday expiration series that are scheduled to expire on a holiday. Pursuant to Options 1, Section 1(b)(53) a Wednesday expiration series shall expire on the first business day immediately prior to that Wednesday, e.g., Tuesday of that week, if the Wednesday is not a business day. For purposes of IWM, however, the Exchange believes that it is preferable to require Monday expiration series in this scenario to expire on the Tuesday of that week rather than the previous business day, e.g., the previous Friday, since the Tuesday is closer in time to the scheduled expiration date of the series than the previous Friday, and therefore may be more representative of anticipated market conditions. Monday SPY and QQQ expirations⁶ are treated in this manner today. Cboe Exchange, Inc. ("Cboe") uses the same procedure for options on the S&P 500 index ("SPX"), Mini-SPX Index Options ("XSP"), Russell 2000 Index ("RUT") and Mini-Russell 200 Index Options ("MRUT") and with Monday expirations that are listed pursuant to its Nonstandard Expirations Pilot Program and that are scheduled to expire on a holiday.⁷ Also, Phlx⁸ and Nasdaq ISE, LLC ("ISE")⁹ use the same procedure for options on the Nasdaq-100® ("NDX") with Monday expirations that are listed pursuant to its Nonstandard Expirations Pilot Programs, respectively.

Currently, for each option class eligible for participation in the Program, the Exchange is limited to opening thirty (30) series for each expiration date

⁴ See Supplementary Material .03(e) to Options 4, Section 5.

⁵ *Id.*

⁶ See Supplementary Material .03(e) at Options 4, Section 5.

⁷ See Cboe Rule 4.13(e)(1) ". . . If the Exchange is not open for business on a respective Monday, the normally Monday expiring Weekly Expirations will expire on the following business day. If the Exchange is not open for business on a respective Wednesday or Friday, the normally Wednesday or Friday expiring Weekly Expirations will expire on the previous business day."

⁸ See Phlx Options 4A, Section 12(b)(5).

⁹ See ISE Supplementary Material .07 to Options 4A, Section 12.

for the specific class.¹⁰ The thirty (30) series restriction does not include series that are open by other securities exchanges under their respective short term option rules; the Exchange may list these additional series that are listed by other exchanges.¹¹ This thirty (30) series restriction would apply to Monday and Wednesday IWM Expiration series as well. In addition, the Exchange will be able to list series that are listed by other exchanges, assuming they file similar rules with the Commission to list IWM options expiring on Mondays and Wednesdays.

Finally, the Exchange is amending Supplementary Material .03(b) to Options 4, Section 5, which addresses the listing of Short Term Options Series that expire in the same week as monthly or quarterly options series. Currently, that rule states that no Short Term Option Series may expire in the same week in which monthly option series on the same class expire (with the exception of Monday and Wednesday SPY and QQQ Expirations) or, in the case of Quarterly Options Series, on an expiration that coincides with an expiration of Quarterly Option Series on the same class.¹² As with Monday and Wednesday SPY and QQQ Expirations, the Exchange proposes to permit Monday and Wednesday IWM Expirations to expire in the same week as monthly options series on the same class. The Exchange believes that it is reasonable to extend this exemption to Monday and Wednesday IWM Expirations because Monday and Wednesday IWM Expirations and standard monthly options will not expire on the same trading day, as standard monthly options expire on Fridays. Additionally, the Exchange believes that not listing Monday and Wednesday IWM Expirations for one week every month because there was a monthly IWM expiration on the Friday of that week would create investor confusion.

The Exchange does not believe that any market disruptions will be encountered with the introduction of P.M.-settled Monday and Wednesday IWM expirations. The Exchange has the necessary capacity and surveillance programs in place to support and properly monitor trading in the proposed Monday and Wednesday IWM Expirations. The Exchange currently trades P.M.-settled Short Term Option Series that expire Monday and

¹⁰ See Supplementary Material .03(a) to Options 4, Section 5.

¹¹ *Id.*

¹² See current Supplementary Material .03(b) to Options 4, Section 5.

Wednesday for SPY and QQQ and has not experienced any market disruptions nor issues with capacity. Today, the Exchange has surveillance programs in place to support and properly monitor trading in Short Term Option Series that expire Monday and Wednesday for SPY and QQQ.

Similar to SPY and QQQ, the introduction of IWM Monday and Wednesday expirations will, among other things, expand hedging tools available to market participants and continue the reduction of the premium cost of buying protection. The Exchange believes that Monday and Wednesday IWM expirations will allow market participants to purchase IWM based on their timing as needed and allow them to tailor their investment and hedging needs more effectively.

Finally, the Exchange proposes to amend the “:” to a “.” after the title “Short Term Options Series Program” within Supplementary Material .03 to Options 3, Section 5.

Implementation

The Exchange intends to begin implementation of the proposed rule change prior to November 1, 2021. The Exchange will issue an Options Trader Alert to Participants with the date of implementation.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ 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 by providing the investing public and other market participants more flexibility to closely tailor their investment and hedging decisions in IWM options, thus allowing them to better manage their risk exposure.

In particular, the Exchange believes the Program has been successful to date and that Monday and Wednesday IWM Expirations should simply expand the ability of investors to hedge risk against market movements stemming from economic releases or market events that occur throughout the month in the same way that the Program has expanded the landscape of hedging. Similarly, the Exchange believes Monday and Wednesday IWM Expirations should

create greater trading and hedging opportunities, as well as flexibility that will provide customers with the ability to tailor their investment objectives more effectively.

Phlx currently lists Monday and Wednesday SPY and QQQ Expirations.¹⁵ Also, Cboe¹⁶ currently permits Monday and Wednesday expirations for other options with a weekly expiration, such as options on the SPX, XSP, RUT and MRUT pursuant to its Nonstandard Expirations Pilot Program. Phlx¹⁷ and ISE¹⁸ currently permit Monday and Wednesday expirations for other options with a weekly expiration on NDX pursuant to its Nonstandard Expirations Pilot Programs, respectively.

With the exception of Monday expiration series that are scheduled to expire on a holiday, there are no material differences in the treatment of Monday and Wednesday IWM expirations for Short Term Option Series. The Exchange believes that it is consistent with the Act to treat Monday expiration series that expire on a holiday differently than Wednesday or Friday expiration series, since the proposed treatment for Monday expiration series will result in an expiration date that is closer in time to the scheduled expiration date of the series, and therefore may be more representative of anticipated market conditions. Monday SPY and QQQ expirations are treated in this manner today.¹⁹ Cboe²⁰ uses the same procedure for SPX, XSP, RUT and MRUT options with Monday expirations that are listed pursuant to its Nonstandard Expirations Pilot Program and that are scheduled to expire on a holiday, as do Phlx²¹ and ISE²² for NDX options with Monday expirations that are listed pursuant to their Nonstandard Expirations Pilot Programs, respectively.

Given the similarities between Monday and Wednesday SPY and QQQ Expirations and the proposed Monday and Wednesday IWM Expirations, the Exchange believes that applying the provisions in Supplementary Material .03 to Options 4, Section 5, which currently apply to Monday and Wednesday SPY and QQQ Expirations, to Monday and Wednesday IWM

¹⁵ See Supplementary Material .03 at Options 4, Section 5.

¹⁶ See note 7 above.

¹⁷ See note 8 above.

¹⁸ See note 9 above.

¹⁹ See Supplementary Material .03 at Options 4, Section 5.

²⁰ See note 7 above.

²¹ See note 8 above.

²² See note 9 above.

Expirations is justified. For example, the Exchange believes that allowing Monday and Wednesday IWM Expirations and monthly IWM expirations in the same week will benefit investors and minimize investor confusion by providing Monday and Wednesday IWM Expirations in a continuous and uniform manner. The Exchange also believes that is appropriate to amend Supplementary Material .03(b) to Options 4, Section 5 to clarify that no Short Term Option Series may expire on the same day as an expiration of Quarterly Option Series on the same class, same as SPY and QQQ.

The Exchange represents that it has an adequate surveillance program in place to detect manipulative trading in Monday and Wednesday expirations, including Monday and Wednesday IWM Expirations, in the same way that it monitors trading in the current Short Term Option Series and trading in Monday and Wednesday SPY and QQQ Expirations. The Exchange also represents that it has the necessary systems capacity to support the new options series. Finally, the Exchange does not believe that any market disruptions will be encountered with the introduction of Monday and Wednesday IWM expirations.

The Exchange's proposal to amend the “:” to a “.” after the title “Short Term Options Series Program” within Supplementary Material .03 to Options 3, Section 5 is a non-substantive technical amendment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that having Monday and Wednesday IWM expirations is not a novel proposal, as Monday and Wednesday SPY and QQQ Expirations are currently listed on Phlx.²³ Cboe²⁴ uses the same procedure for SPX, XSP, RUT and MRUT options with Monday expirations that are listed pursuant to its Nonstandard Expirations Pilot Program and that are scheduled to expire on a holiday, as do Phlx²⁵ and ISE²⁶ for NDX options with Monday expirations that are listed pursuant to their Nonstandard Expirations Pilot Programs, respectively.

The Exchange does not believe the proposal will impose any burden on

²³ See note 8 above.

²⁴ See note 7 above.

²⁵ See note 8 above.

²⁶ See note 9 above.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

intra-market competition, as all market participants will be treated in the same manner under this proposal.

Additionally, the Exchange does not believe the proposal will impose any burden on inter-market competition, as nothing prevents the other options exchanges from proposing similar rules to list and trade Short-Term Option Series with Monday and Wednesday expirations.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-Phlx-2021-43 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-Phlx-2021-43. 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-Phlx-2021-43 and should be submitted on or before September 8, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-17672 Filed 8-17-21; 8:45 am]

BILLING CODE 8011-01-P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA-2021-0029]

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104-13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions to an OMB-approved information collection.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information

collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers. (OMB) Office of Management and Budget, Attn: Desk Officer for SSA

Comments: <https://www.reginfo.gov/public/do/PRAMain>. Submit your comments online referencing Docket ID Number [SSA-2021-0029].

(SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410-966-2830, Email address: OR.Reports.Clearance@ssa.gov

Or you may submit your comments online through <https://www.reginfo.gov/public/do/PRAMain>, referencing Docket ID Number [SSA-2021-0029].

The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than October 18, 2021. Individuals can obtain copies of the collection instruments by writing to the above email address.

Continuing Disability Review Report—20 CFR 404.1589 & 416.989-0960-0072. Sections 221(i), 1614(a)(3)(H)(ii)(I) and 1633(c)(1) of the Social Security Act (Act) require SSA to periodically review the cases of individuals who receive benefits under Title II or Title XVI based on disability to determine if their disability continues. SSA considers adults eligible for disability payments if they continue to be unable to perform substantial gainful activity because of their impairments, and we consider Title XVI children eligible for disability payment if they have marked and severe functional limitations because of their impairments. To assess claimants' ongoing disability payment eligibility, SSA requires disability recipients (or their representatives acting on their behalf) to undergo a continuing disability review (CDR). SSA uses the Continuing Disability Review Report to obtain information on disability recipients' disability; on their sources of medical treatment; on their participation in vocational rehabilitation programs (if any); on attempts to work (if any); and on recipients' assessments when they believe their conditions improved.

Title II or Title XVI disability recipients can complete the Continuing Disability Review Report using one of three modalities: (1) A paper application or fillable PDF (using Form SSA-454-BK), which SSA mails to recipients or their representatives; (2) a field office interview, during which SSA employees enter recipient data directly into SSA's

²⁷ 17 CFR 200.30-3(a)(12).

internal Electronic Disability Collection System; or (3) upon the completion of the current PRA process, a new online, entirely web-based system called the i454. This new web-based modality will provide recipients a new platform for

submitting information to increase accessibility, and enhance automation. In this information collection request, we are soliciting comment on the new i454.

The respondents are Title II or Title XVI disability recipients or their representatives.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office or for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
SSA-454- BK (paper version)	189,350	1	60	189,350	* \$10.95	** 24	*** \$2,902,736
Electronic Disability Collect System (EDCS)	270,500	1	60	270,500	* 10.95	** 24	*** 4,146,765
i454 (Internet)	81,150	1	60	81,150	* 10.95	.....	*** 888,593
Totals	541,000	.....	.....	541,000**	.....	.....	*** 7,938,094

* We based this figure on the average DI payments based on SSA's current FY 2021 data (<https://www.ssa.gov/legislation/2021FactSheet.pdf>).
 ** We based this figure on the average FY 2021 wait times for field offices, based on SSA's current management information data.
 *** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

Dated: August 12, 2021.
Naomi Sipple,
Reports Clearance Officer, Social Security Administration.
 [FR Doc. 2021-17659 Filed 8-17-21; 8:45 am]
BILLING CODE 4191-02-P

DEPARTMENT OF STATE

[Public Notice 11501]

60-Day Notice of Proposed Information Collection: Request for Authentication Service in the United States

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to *October 18, 2021*.

ADDRESSES: You may submit comments by any of the following methods:
 • *Web:* Persons with access to the internet may comment on this notice by going to www.Regulations.gov. You can search for the document by entering "Docket Number: DOS-2021-0026" in the Search field. Then click the

"Comment Now" button and complete the comment form.

- *Email:* PPTFormsOfficer@state.gov.
- *Regular Mail:* Send written comments to: Passport Forms Officer, U.S. Department of State, CA/PPT/S/PMO, 44132 Mercure Cir., P.O. Box 1199, Sterling, VA 20166-1199.

You must include the DS form number (DS-4194), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT:

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Kim Makle, Program Manager, U.S. Department of State, CA/PPT/S/PMO, 44132 Mercure Cir., P.O. Box 1199, Sterling, VA 20166-1199, who may be reached at PPTFormsOfficer@state.gov.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Request for Authentications Service DS-4194.
- *OMB Control Number:* None.
- *Type of Request:* Existing Information Collection Request without OMB Control Number.
- *Originating Office:* Bureau of Consular Affairs, Passport Services, Office of Program Management and Operational Support (CA/PPT/S/PMO).
- *Form Number:* DS-4194.
- *Respondents:* This information collection will be used by members of the public who wish to authenticate a document in the United States.
- *Estimated Number of Respondents:* 47,094.

- *Estimated Number of Responses:* 47,094.
- *Average Time per Response:* 10 minutes.
- *Total Estimated Burden Time:* 7,849 hours.
- *Frequency:* Information is requested only when an applicant submits the form to obtain a benefit.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit. We are soliciting public comments to permit the Department to:
 - Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
 - Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
 - Enhance the quality, utility, and clarity of the information to be collected.
 - Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The form created by this information collection (DS-4194) will be used to request authentications services from the Authentications Office of the U.S. Department of State in the United

States. In accordance with 22 CFR part 131, the Office of Authentications provides authentication services for federal public documents that will be used overseas. These services support individuals, commercial organizations, institutions, and federal and state government agencies seeking to use certain documents abroad.

Methodology

The form will be downloaded from <http://eforms.state.gov>. After completion, the form may be submitted by mail or hand-delivery.

Rachel M. Arndt,

Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 2021-17705 Filed 8-17-21; 8:45 am]

BILLING CODE 4710-06-P

SURFACE TRANSPORTATION BOARD

Senior Executive Service Performance Review Board (PRB) and Executive Resources Board (ERB) Membership

AGENCY: Surface Transportation Board.

ACTION: Notice of Senior Executive Service Performance Review Board (PRB) and Executive Resources Board (ERB) Membership.

SUMMARY: Effective immediately, the membership of the PRB and ERB is as follows:

Performance Review Board

William Brennan, Chairman
Rachel Campbell, Member
Craig M. Keats, Member

Executive Resources Board

Rachel Campbell, Chairman
William Brennan, Member
Craig M. Keats, Member

FOR FURTHER INFORMATION CONTACT: If you have any questions, please contact Jennifer Layne at jennifer.layne@stb.gov or 202-245-0340.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2021-17685 Filed 8-17-21; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval of a new information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 21, 2021.

DATES: Written comments should be submitted by September 17, 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.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA’s performance; (b) the accuracy of the estimated burden; (c) ways for FAA 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.

FOR FURTHER INFORMATION CONTACT: Barbara Hall at (940) 594-5913, or by email at Barbara.L.Hall@faa.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120-0746.

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Form Numbers: There are no FAA forms associated with this generic information collection.

Type of Review: Renewal of a generic information collection.

Background: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration’s commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

Respondents: Approximately 110,000 Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Frequency: Once per request.

Estimated Average Burden per Response: 10 minutes.

Estimated Total Annual Burden: 18,330 hours.

Issued in Fort Worth, TX on August 13, 2021.

Barbara Hall,

FAA Information Collection Clearance
Officer, IT Enterprises Business Services
Division, ASP-110.

[FR Doc. 2021-17720 Filed 8-17-21; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2021-0118]

Commercial Driver's License Standards: Application for Exemption; Werner Enterprises, Inc.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that Werner Enterprises, Inc. (Werner) has applied for an exemption to allow commercial learner's permit (CLP) holders who have successfully passed the commercial driver's license (CDL) skills test to be able to drive a commercial motor vehicle (CMV) without having a CDL holder seated beside them in the CMV. The Agency requests public comment on the exemption application.

DATES: Comments must be received on or before September 17, 2021.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA-2021-0118 by any of the following methods:

- *Federal eRulemaking Portal:* www.regulations.gov. See the Public Participation and Request for Comments section below for further information.
- *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., Monday through Friday, except Federal holidays.
- *Fax:* 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice (FMCSA-2021-0118). Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, 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) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its exemptions process. 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 www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; (202-366-4225); MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2021-0118), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comments online, go to www.regulations.gov and put the docket number, "FMCSA-2021-0118" in the "Search" box, and click "Search." When the new screen appears, click on "Documents" button, then click "Comment" button associated with the latest notice posted. Another screen will appear, insert the required information. Choose whether you are submitting your comment as an individual, an organization, or anonymous. Click "Submit Comment."

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Current Regulation Requirements

Under 49 CFR 383.25(a)(1) a CLP holder must be accompanied at all times by the holder of a valid CDL who has the proper CDL group and endorsement(s) necessary to operate the CMV. The CDL holder must at all times be physically present in the front seat of the vehicle next to the CLP holder while operating a CMV on public roads or highways and must have the CLP holder under observation and direct supervision.

Applicant's Request

Werner requests the exemption to allow CLP holders who have successfully passed a CDL skills test and are thus eligible to receive a CDL, be able to drive without having a CDL

holder seated beside them in the vehicle. Werner, however, indicates their exemption request that the CDL holder will remain in the vehicle at all times while the CLP holder is driving—just not in the front seat. Werner contends that an exemption from this regulation will benefit Werner and the trucking industry in three ways: Improving efficiency of freight operations by maximizing driver employment during an historic driver shortage; creating immediate employment and compensation opportunities to qualified drivers; and improving the overall safety of the new driver experience. Werner believes it will face a significant burden in all three areas if this exemption is not granted.

Werner asserts that 49 CFR 383.25(a)(1) has created a significant burden on its operations. Prior to the implementation of the regulation, a new driver's state of domicile issued temporary CDLs to drivers who passed the CDL skills test. The temporary CDL made it possible for Werner to place the new driver as "on duty" and route him or her to the State of domicile to obtain a CDL, and without entering a second driver into an "on duty" status, thus allowing productive freight movement for Werner and compensation for the new driver. A copy of the exemption application is in the docket referenced at the beginning of this notice.

IV. Equivalent Level of Safety

Werner believes that by applying the exemption only to drivers who have passed the CDL skills test, hold a CLP, and operate the CMV under supervision of a CDL holder who is somewhere in the vehicle, an equivalent level of safety will likely be achieved. Werner believes that there is no difference between the CLP holders who have passed the CDL skills test and other truck drivers on the road. In fact, Werner notes that by allowing a CLP holder who has passed the CDL skills test out of State to drive *en route* to their State of domicile with a CDL holder present in the vehicle, safety will be improved over current regulations, which allow a new CDL holder to drive unsupervised immediately after receiving his or her CDL documentation. Werner will ensure this level of safety by maintaining proper, up-to-date records for all drivers in possession of a CLP who have passed the CDL skills test.

V. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on Werner's application for an exemption from 49 CFR 383.25(a)(1). All comments

received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the Addresses section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable.

In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2021-17690 Filed 8-17-21; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2012-0154; FMCSA-2013-0124; FMCSA-2014-0383; FMCSA-2014-0385; FMCSA-2014-0386; FMCSA-2018-0138]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for eight individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

DATES: The exemptions are applicable on August 13, 2021. The exemptions expire on August 13, 2023. Comments must be received on or before September 17, 2021.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA-2012-0154, Docket No. FMCSA-2013-0124, Docket No. FMCSA-2014-0383, Docket No. FMCSA-2014-0385, Docket No. FMCSA-2014-0386, or Docket No. FMCSA-2018-0138 using any of the following methods:

- *Federal eRulemaking Portal:* Go to www.regulations.gov/, insert the docket

number, FMCSA-2012-0154, FMCSA-2013-0124, FMCSA-2014-0383, FMCSA-2014-0385, FMCSA-2014-0386, or FMCSA-2018-0138 in the keyword box, and click "Search." Next, sort the results by "Posted (Newer-Older)," choose the first notice listed, and click on the "Comment" button. Follow the online instructions for submitting comments.

- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001 between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.

- *Fax:* (202) 493-2251.

To avoid duplication, please use only one of these four methods. See the "Public Participation" portion of the SUPPLEMENTARY INFORMATION section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA-2012-0154, Docket No. FMCSA-2013-0124, Docket No. FMCSA-2014-0383, Docket No. FMCSA-2014-0385, Docket No. FMCSA-2014-0386, or Docket No. FMCSA-2018-0138), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to www.regulations.gov/, insert the docket number, FMCSA-2012-0154, FMCSA-

2013–0124, FMCSA–2014–0383, FMCSA–2014–0385, FMCSA–2014–0386, or FMCSA–2018–0138 in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, click the “Comment” button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to www.regulations.gov. Insert the docket number, FMCSA–2012–0154, FMCSA–2013–0124, FMCSA–2014–0383, FMCSA–2014–0385, FMCSA–2014–0386, or FMCSA–2018–0138 in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, and click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, 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) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its regulatory process. 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 www.transportation.gov/privacy.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The

statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver’s medical certification.

The physical qualification standard for drivers regarding hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5–1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

The eight individuals listed in this notice have requested renewal of their exemptions from the hearing standard in § 391.41(b)(11), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the eight applicants has satisfied the renewal conditions for obtaining an exemption from the hearing requirement. The eight drivers in this notice remain in good standing with the Agency. In addition, for Commercial Driver’s License (CDL) holders, the Commercial Driver’s License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the

Agency reviews the driving records from the State Driver’s Licensing Agency. These factors provide an adequate basis for predicting each driver’s ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each of these drivers for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

As of August 13, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following eight individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Timothy Finley (CA)
Frankye Helbig (FL)
William Jones (MN)
Tommy Lynn, Jr. (AZ)
David Presley (TX)
Joseph Strassburg (SD)
Jason Swearington (TX)
Holly Cameron Wright (NC)

The drivers were included in docket number FMCSA–2012–0154, FMCSA–2013–0124, FMCSA–2014–0383, FMCSA–2014–0385, FMCSA–2014–0386, or FMCSA–2018–0138. Their exemptions are applicable as of August 13, 2021 and will expire on August 13, 2023.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must report any crashes or accidents as defined in § 390.5; and (2) report all citations and convictions for disqualifying offenses under 49 CFR 383 and 49 CFR 391 to FMCSA; and (3) each driver prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements. Each exemption will be valid for 2 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or

regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the eight exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the hearing requirement in § 391.41(b)(11). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for two years unless revoked earlier by FMCSA.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2021-17693 Filed 8-17-21; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.:

202-622-2490; Associate Director for Global Targeting, tel.: 202-622-2420; Assistant Director for Licensing, tel.: 202-622-2480; Assistant Director for Regulatory Affairs, tel.: 202-622-4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (www.treasury.gov/ofac).

Notice of OFAC Action(s)

A. On August 9, 2021, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

BILLING CODE 4810-AL-P

Individuals:

1. RYBAKOV, Andrei Alekseevich (Cyrillic: РЫБАКОВ, Андрей Алексеевич) (a.k.a. RYBAKOU, Andrei; a.k.a. RYBAKOU, Andrei Aliakseevich (Cyrillic: РЫБАКОЎ, Андрэй Аляксеевіч)), Minsk, Belarus; DOB 11 Jul 1976; POB Mahilyow, Belarus; nationality Belarus; Gender Male (individual) [BELARUS].

Designated pursuant to section 1(a)(ii)(E) of Executive Order 13405 of June 16, 2006, "Blocking Property of Certain Persons Undermining Democratic Processes or Institutions in Belarus," 71 FR 35485, 3 CFR 13405 (E.O. 13405), for acting or purporting to act for or on behalf of, directly or indirectly, a person listed in or designated pursuant to E.O. 13405.

2. SHAKUTA, Dzmitry (a.k.a. SHAKUTA, Dmitry Shok; a.k.a. SHAKUTA, Dmitry Viktorovich (Cyrillic: ШАКУТА, Дмитрий Викторович); a.k.a. SHAKUTA, Dzmitriy Viktaravich (Cyrillic: ШАКУТА, Дзмітрый Віктаравіч)), Minsk, Belarus; DOB 07 Aug 1980; POB Minsk, Belarus; nationality Belarus; Gender Male; National ID No. 3070880A011PB2 (Belarus); Tax ID No. AA1917617 (Belarus) (individual) [BELARUS].

Designated pursuant to section 1(a)(ii)(B) of E.O. 13405 for being responsible for, or having participated in, human rights abuses related to political repression in Belarus.

3. ALEKSIN, Aliaksey Ivanavich (Cyrillic: АЛЕКСІН, Аляксей Іванавіч) (a.k.a. ALEKSIN, Aliaksei; a.k.a. ALEKSIN, Aliaksey (Cyrillic: АЛЕКСІН, Аляксей); a.k.a. OLEKSIN, Aleksey; a.k.a. OLEKSIN, Alexei; a.k.a. OLEKSIN, Alexei Ivanovich (Cyrillic: ОЛЕКСИН, Алексей Иванович); a.k.a. OLEKSIN, Alexey), Lyn'kova Street, 43-51, Minsk 220124, Belarus; DOB 29 Oct 1966; nationality Belarus; Gender Male (individual) [BELARUS].

Designated pursuant to section 1(a)(ii)(C) of E.O. 13405 for being a senior-level official, a family member of such an official, or a person closely linked to such an official who is responsible for or has engaged in public corruption related to Belarus.

4. BUNAKOV, Andrei Nikolayevich (Cyrillic: БУНАКОВ, Андрей Николаевич) (a.k.a. BUNAKOV, Andrei (Cyrillic: БУНАКОВ, Андрей); a.k.a. BUNAKOV, Andrey), Belarus; DOB 05 Jul 1971; POB Svetlogorsk, Gomel Oblast, Belarus; nationality Belarus; Gender Male (individual) [BELARUS].

Designated pursuant to section 1(a)(ii)(E) of E.O. 13405 for acting or purporting to act for or on behalf of, directly or indirectly, a person listed in or designated pursuant to E.O. 13405.

5. VARABEI, Mikalai Mikalaevich (Cyrillic: ВАРАБЕЙ, Мікалаевіч Мікалай) (a.k.a. VARABEY, Mikalai; a.k.a. VERABEI, Mikalai Mikalaevich (Cyrillic: ВЕРАБЕЙ, Мікалай Мікалаевіч); a.k.a. VERABEY, Mikalai (Cyrillic: ВЕРАБЕЙ, Мікалай); a.k.a. VOROBEL, Mykola Mykolaiovych; a.k.a. VOROBEL, Nikolai; a.k.a. VOROBEL, Nikolay (Cyrillic: ВОРОБЕЙ, Николай); a.k.a. VOROBEL, Nikolay Nikolaevich (Cyrillic: ВОРОБЕЙ, Николай Николаевич)), Belarus; DOB 04 May 1963; POB Ukraine; Gender Male (individual) [BELARUS].

Designated pursuant to section 1(a)(ii)(C) of E.O. 13405 for being a senior-level official, a family member of such an official, or a person closely linked to such an official who is responsible for or has engaged in public corruption related to Belarus.

6. LYASHENKO, Igor Vasilyevich (Cyrillic: ЛЯШЕНКО, Игорь Васильевич) (a.k.a. LIASHENKA, Ihar Vasilevich (Cyrillic: ЛЯШЭНКА, Ігар Васільевіч); a.k.a. LYASHENKO, Igor (Cyrillic: ЛЯШЕНКО, Игорь)), Belarus; DOB 05 Nov 1974; POB Ochamchire, Georgia; nationality Belarus; Gender Male (individual) [BELARUS].

Designated pursuant to section 1(a)(ii)(E) of E.O. 13405 for acting or purporting to act for or on behalf of, directly or indirectly, a person listed in or designated pursuant to E.O. 13405.

7. DRYL, Hleb Uladzimiravich (Cyrillic: ДРЫЛЬ, Глеб Уладзіміравіч) (a.k.a. DRIL, Gleb Vladimirovich (Cyrillic: ДРИЛЬ, Глеб Владимирович); a.k.a. DRIL, Gleb Vladimirovitj; a.k.a. DRYL, Gleb; a.k.a. DRYL, Hleb Uladzimiravij), Shugaeva, 27-69, Minsk, Belarus (Cyrillic: Шугаева, 27-69, Минск, Belarus); DOB 12 May 1980; nationality Belarus; Gender Male; National ID No. 3120580A003PB0 (Belarus) (individual) [BELARUS-EO].

Designated pursuant to section 1(a)(iii) of Executive Order 14038 of August 9, 2021, "Blocking Property of Additional Persons Contributing to the Situation in Belarus," (E.O. 14038), expanding the scope of the national emergency declared in E.O. 13405, for being or having been a leader or official of the Government of Belarus.

8. KENIUKH, Ihar Ryhoravich (Cyrillic: КЕНЮХ, Ігар Рыгоравіч) (a.k.a. KENIUKH, Igor Grigorevich (Cyrillic: КЕНЮХ, Игорь Григорьевич); a.k.a. KENJUCH, Igor Grigorjevitj; a.k.a. KENJUCH, Ihar Ryhoravij), Vudyonovo, 15-36, Minsk, Belarus (Cyrillic: Будённаго, 15-36, Минск, Belarus); Magnitaya, 30-20, Minsk, Belarus (Cyrillic: Магнітная, 30-20, Минск, Belarus); DOB 21 Jan 1980; POB Homel Oblast, Belarus; nationality Belarus; Gender Male; National ID No. 3210180H066PB2 (Belarus); Tax ID No. AB9050449 (Belarus) (individual) [BELARUS-EO].

Designated pursuant to section 1(a)(iii) of E.O. 14038 for being or having been a leader or official of the Government of Belarus.

9. LAPYR, Uladzimir Iosifavich (Cyrillic: ЛАПЫР, Уладзімір Іосіфавіч) (a.k.a. LAPYR, Uladzimir Iosifavitj; a.k.a. LAPYR, Vladimir Iosifovich; a.k.a. LAPYR, Vladimir Iosifovitj; a.k.a. LAPYR, Vladimir Yosifovich (Cyrillic: ЛАПЫРЬ, Владимир Иосифович)), Severnaya ulitsa, 51, Miory, Belarus (Cyrillic: Северная улица, 51, Миоры, Belarus); DOB 21 Aug 1977; nationality Belarus; Gender Male (individual) [BELARUS-EO].

Designated pursuant to section 1(a)(iii) of E.O. 14038 for being or having been a leader or official of the Government of Belarus.

10. SHAPETSKA, Yauhen Andreevich (Cyrillic: ШАПЕЦЬКА, Яўген Андрэвіч) (a.k.a. SHAPETKO, Evgeniy Andreevich (Cyrillic: ШАПЕТЬКО, Евгений Андреевич); a.k.a. SHAPETKO, Evgeny; a.k.a. SHAPETKO, Yevgeniy Andreevich; a.k.a. SHAPETKO, Yevgeny; a.k.a. SHAPETSKA, Yauheni Andrejevich; a.k.a. SJAPETKO, Jevgenij Andrejevitj; a.k.a. SJAPETSKA, Jauhen Andrejevitj), Polevaya, 6-58, Minsk, Belarus (Cyrillic: Полевая, 6-58, Минск, Belarus); DOB 30 Mar 1989; alt. DOB 30 Mar 1988; POB Minsk, Belarus; nationality Belarus; Gender Male; National ID No. 3300389A054PB9 (Belarus); Tax ID No. AC1400707 (Belarus) (individual) [BELARUS-EO].

Designated pursuant to section 1(a)(iii) of E.O. 14038 for being or having been a leader or official of the Government of Belarus.

11. HARA, Dzmitry Iurevich (Cyrillic: ГАРА, Дзмітрый Юр'евіч) (a.k.a. GORA, Dmitri; a.k.a. GORA, Dmitry Iurevich (Cyrillic: ГОРА, Дмитрий Юрьевич); a.k.a. GORA, Dmitry Yurievich), Minsk, Belarus; DOB 04 May 1970; POB Tbilisi, Georgia; nationality Belarus; Gender Male (individual) [BELARUS-EO].

Designated pursuant to section 1(a)(iii) of E.O. 14038 for being or having been a leader or official of the Government of Belarus.

12. ВУЧАК, Kanstantsin Fiodaravich (Cyrillic: БЫЧАК, Канстанцін Федаравіч) (a.k.a. ВУЧЕК, Konstantin Fedorovich (Cyrillic: БЫЧЕК, Константин Федорович)), ul. Kazimirovskaya, 3-3, Minsk, Belarus; DOB 20 Sep 1985; nationality Belarus; Gender Male (individual) [BELARUS-EO].

Designated pursuant to section 1(a)(iii) of E.O. 14038 for being or having been a leader or official of the Government of Belarus.

13. SHMANAI, Darya (Cyrillic: ШМАНАЙ, Дар'я), Moscow, Russia; Ostroshitskaya, 8-35, Minsk 220129, Belarus; DOB 02 May 1993; POB Minsk, Belarus; nationality Belarus; Gender Female; National ID No. 4020593A018PB8 (Belarus) (individual) [BELARUS-EO].

Designated pursuant to section 1(a)(iii) of E.O. 14038 for being or having been a leader or official of the Government of Belarus.

14. CHURO, Leanid Mikalaevich (Cyrillic: ЧУРО, Леанід Мікалаевіч) (a.k.a. CHURO, Leonid Nikolaevich (Cyrillic: ЧУРО, Леонид Николаевич)), Minsk, Belarus; DOB 08 Jul 1956; citizen Belarus; Gender Male; Passport P4289481 (Belarus); Identification Number 3080756A068PB5 (Belarus) (individual) [BELARUS-EO].

Designated pursuant to section 1(a)(iii) of E.O. 14038 for being or having been a leader or official of the Government of Belarus.

15. HAIDUKEVICH, Aleh Siarheevich (Cyrillic: ГАЙДУКЕВИЧ, Олег Сяргеевіч) (a.k.a. GAIDUKEVICH, Oleg Sergeevich (Cyrillic: ГАЙДУКЕВИЧ, Олег Сергеевич)), Minsk, Belarus; DOB 26 Mar 1977; POB Minsk, Belarus; nationality Belarus; Gender Male; Passport MP2663333 (Belarus); National Foreign ID Number 3260377A081PB9 (Belarus) (individual) [BELARUS-EO].

Designated pursuant to section 1(a)(iii) of E.O. 14038 for being or having been a leader or official of the Government of Belarus.

16. AZEMSHA, Siarhei Yakaulevich (Cyrillic: АЗЕМША, Сяргей Якаўлевіч) (a.k.a. AZEMSHA, Sergei Yakovlevich (Cyrillic: АЗЕМША, Сергей Яковлевич)), Minsk, Belarus; DOB 17 Jul 1974; POB Rechitsa, Gomel Oblast, Belarus; nationality Belarus; Gender Male (individual) [BELARUS-EO].

Designated pursuant to section 1(a)(i)(B) of E.O. 14038 for being or having been a leader, official, senior executive officer, or member of the board of directors of an entity whose property and interests in property are blocked pursuant to E.O. 14038 or E.O. 13405.

17. SHANDAROVICH, Oleg Stanislavovich (Cyrillic: ШАНДАРОВИЧ, Олег Станиславович), Minsk, Belarus; DOB 25 May 1973; POB Mahilyow, Belarus; nationality Belarus; Gender Male (individual) [BELARUS-EO].

Designated pursuant to section 1(a)(i)(B) of E.O. 14038 for being or having been a leader, official, senior executive officer, or member of the board of directors of an entity whose property and interests in property are blocked pursuant to E.O. 14038 or E.O. 13405.

18. VASILIEV, Anatoly Ivanovich (Cyrillic: ВАСИЛЬЕВ, Анатолий Иванович) (a.k.a. VASILYEV, Anatoliy Ivanovich), Minsk, Belarus; DOB 1978; POB Georgia; nationality Belarus; Gender Male (individual) [BELARUS-EO].

Designated pursuant to section 1(a)(i)(B) of E.O. 14038 for being or having been a leader, official, senior executive officer, or member of the board of directors of an entity whose property and interests in property are blocked pursuant to E.O. 14038 or E.O. 13405.

19. KARIC, Nebojsa (Cyrillic: КАРИЧ, Небойша), Palm Jumeirah, Tiara Residence, Emerald Bldg, Apt. 1102, Dubai, United Arab Emirates; DOB 07 Feb 1979; nationality Serbia; alt. nationality Cyprus; Gender Male; Passport HG043863 (Cyprus) (individual) [BELARUS-EO].

Designated pursuant to section 1(a)(vii) of E.O. 14038 having acted or purporting to act for or on behalf of, directly or indirectly, the Government of Belarus or any person whose property and interests in property are blocked pursuant to E.O. 14038.

20. AURAMENKA, Aliaksei Mikalaevich (Cyrillic: АЎРАМЕНКА, Аляксей Мікалаевіч) (a.k.a. AVRAMENKO, Aleksey; a.k.a. AVRAMENKO, Aleksey Nikolaevich; a.k.a. AVRAMENKO, Alexey Nikolaevich (Cyrillic: АВРАМЕНКО, Алексей Николаевич)), Minsk, Belarus; DOB 11 May 1977; POB Minsk, Belarus; nationality Belarus; Gender Male; Passport MP3102183 (Belarus); National ID No. 3110577A020PB2 (Belarus) (individual) [BELARUS-EO].

Designated pursuant to section 1(a)(iii) of E.O. 14038 for being or having been a leader or official of the Government of Belarus.

21. KHORONEKO, Vyacheslav Vasilyevich (Cyrillic: ХОРОНЕКО, Вячеслав Васильевич) (a.k.a. KHARANENKA, Viacheslau (Cyrillic: ХАРАНЕКА, Вячаслаў)), Minsk, Belarus; DOB 1964; POB Minsk, Belarus; nationality Belarus; Gender Male (individual) [BELARUS-EO].

Designated pursuant to section 1(a)(iii) of E.O. 14038 for being or having been a leader or official of the Government of Belarus.

22. DAVYDZKA, Genadz Branislavavich (Cyrillic: ДАВЫДЗКА, Генадзь Браніслававіч) (a.k.a. DAVYDKO, Gennadi Bronislavovich (Cyrillic: ДАВЫДЬКО, Геннадий Брониславович); a.k.a. DAVYDKO, Gennady), Minsk, Belarus; DOB 29 Sep 1955; POB Popovka village, Senno/Sjanno, Vitebsk Region, Belarus; nationality Belarus; Gender Male; Passport MP2156098 (Belarus) (individual) [BELARUS-EO].

Designated pursuant to section 1(a)(iii) of E.O. 14038 for being or having been a leader or official of the Government of Belarus.

23. SIKORSKI, Artsiom Igaravich (Cyrillic: СІКОРСКІ, Арцём Ігаравіч) (a.k.a. SIKORSKIY, Artem Igorevich (Cyrillic: СІКОРСКИЙ, Артем Игоревич); a.k.a. SIKORSKY, Artem; a.k.a. SIKORSKY, Artyom), Minsk, Belarus; DOB 1983; POB Soligorsk, Minsk Oblast, Belarus; nationality Belarus; Gender Male; Passport MP3785448 (Belarus) (individual) [BELARUS-EO].

Designated pursuant to section 1(a)(iii) of E.O. 14038 for being or having been a leader or official of the Government of Belarus.

Entities:

1. BELKAZTRANS (Cyrillic: БЕЛКАЗТРАНС) (a.k.a. LIMITED LIABILITY COMPANY BELKAZTRANS; a.k.a. LLC BELKAZTRANS; a.k.a. OBNICHESTVO S OGRANICHENNOY OTVETSTVENNOSTYU BELKAZTRANS (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ БЕЛКАЗТРАНС); a.k.a. ООО BELKAZTRANS (Cyrillic: ООО БЕЛКАЗТРАНС); a.k.a. TAA BELKAZTRANS (Cyrillic: ТАА БЕЛКАЗТРАНС); a.k.a. TAVARYSTVA Z ABMEZHAVANAY ADKAZNASTSYU BELKAZTRANS (Cyrillic: ТАВАРЫСТВА З

АБМЕЖАВАНАЙ АДКАЗНАСЦЮ БЕЛКАЗТРАНС)), pr-t Pobeditelei, d. 20 korpus 3, pom. 215, Minsk 220020, Belarus (Cyrillic: пр-т Победителей, д. 20 корпус 3, пом. 215, г. Минск 220020, Belarus); Organization Established Date 26 Oct 2010; Registration Number 191434523 (Belarus) [BELARUS].

Designated pursuant to section 1(a)(ii)(E) of E.O. 13405 for being owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, a person listed in or designated pursuant to E.O. 13405.

2. BELKAZTRANS UKRAINE (Cyrillic: БЕЛКАЗТРАНС УКРАИНА) (a.k.a. BELKAZTRANS UKRAINA TOV; a.k.a. BELKAZTRANS UKRAINE LLC; a.k.a. TOVARYSTVO Z OBMЕZHENOYU VIDPOVIDALNISTYU BELKAZTRANS UKRAINA), Bud. 3, Korpus A, vul. Leptyszka, Kyiv 01015, Ukraine; Organization Established Date 2018; Tax ID No. 419096426535 (Ukraine); Government Gazette Number 41909645 (Ukraine) [BELARUS].

Designated pursuant to section 1(a)(ii)(E) of E.O. 13405 for being owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, a person listed in or designated pursuant to E.O. 13405.

3. NATIONAL OLYMPIC COMMITTEE OF THE REPUBLIC OF BELARUS (a.k.a. BELARUSIAN NATIONAL OLYMPIC COMMITTEE; a.k.a. NAK BELARUSI (Cyrillic: НАК БЕЛАРУСИ); a.k.a. NATSIONALNIY OLIMPIYSKIY KOMITET RESPUBLIKI BELARUS (Cyrillic: НАЦИОНАЛЬНЫЙ ОЛИМПИЙСКИЙ КОМИТЕТ РЕСПУБЛИКИ БЕЛАРУСЬ); a.k.a. NATSYUALNY ALIMPIYSKIY KOMITET RESPUBLIKI BELARUS (Cyrillic: НАЦЫЯНАЛЬНЫ АЛІМПІЙСКІ КАМІТЭТ РЭСПУБЛІКІ БЕЛАРУСЬ); a.k.a. NOC OF THE REPUBLIC OF BELARUS; a.k.a. NOK BELARUSI (Cyrillic: НОК БЕЛАРУСИ)), Raduzhnaya Str, 27-2, Minsk 220020, Belarus; ul. Raduzhnaya, d. 27, pom. 2, Minsk 220020, Belarus (Cyrillic: ул. Радужная, д. 27, пом. 2, г. Минск 220020, Belarus); Organization Established Date 01 Jul 1991; Registration Number 100265118 (Belarus) [BELARUS].

Designated pursuant to section 1(a)(ii)(E) of E.O. 13405 for being owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, a person listed in or designated pursuant to E.O. 13405.

4. SHOCK SPORTS CLUB (Cyrillic: СПОРТИВНЫЙ КЛУБ ШОК) (a.k.a. MALADZEZHNAE SPARTYUNAE HRAMADSKAE ABYADNANNE SPARTYUNY KLUB SHOK (Cyrillic: МАЛАДЗЕЖНАЕ СПАРТЫЎНАЕ ГРАМАДСКАЕ АБЯДНАННЕ СПАРТЫЎНЫ КЛУБ ШОК); a.k.a. MOLODEZHNOYE SPORTIVNOYE OBSHESTVENNOYE OBEDINENIYE SHOK (Cyrillic: МОЛОДЕЖНОЕ СПОРТИВНОЕ ОБЩЕСТВЕННОЕ ОБЪЕДИНЕНИЕ СПОРТИВНЫЙ КЛУБ ШОК); a.k.a. MSOO SK SHOCK (Cyrillic: МСОО СК ШОК); a.k.a. "SHOCK TEAM"; a.k.a. "SPORTS CLUB SHOCK"), ul. Boleslava Veruta, 12, Minsk, Belarus (Cyrillic: улица Болеслава Берута, 12, Минск, Belarus); ul. Filimonova, 55/3, Pom. 3H (cab.2), Minsk, Belarus (Cyrillic: ул. Филимонова, д. 55 корпус 3, пом. 3н (каб.2), Минск, Belarus); Organization Established Date 12 Oct 2010; Registration Number 194901875 (Belarus) [BELARUS].

Designated pursuant to section 1(a)(ii)(E) of E.O. 13405 for being owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, a person listed in or designated pursuant to E.O. 13405.

5. DEPARTMENT OF INTERNAL AFFAIRS OF THE GOMEL REGIONAL EXECUTIVE COMMITTEE (Cyrillic: УПРАВЛЕНИЕ ВНУТРЕННИХ ДЕЛ ГОМЕЛЬСКОГО ОБЛИСПОЛКОМА) (a.k.a. DEPARTMENT OF INTERNAL AFFAIRS OF GOMEL REGION EXECUTIVE COMMITTEE; a.k.a. DIRECTORATE OF INTERNAL AFFAIRS OF THE GOMEL OBLAST EXECUTIVE COMMITTEE), ul. Skommunarov, Gomel, Gomel Oblast 245050, Belarus; 3, Street of Communards, Gomel, Belarus; 3 Kommunarov St., Gomel, Belarus (Cyrillic: ул. Коммунаров 3, Гомель, Беларусь); Target Type Government Entity [BELARUS].

Designated pursuant to section 1(a)(ii)(A) of E.O. 13405 for being responsible for, or having participated in, actions or policies that undermine democratic processes or institutions in Belarus.

6. CLOSED JOINT STOCK COMPANY ABSOLUTBANK (a.k.a. ABSOLUTBANK; a.k.a. CJSC ABSOLUTBANK; a.k.a. ZAKRYTAYE AKTSYYANERNAYE TAVARYSTVA ABSALYUTBANK (Cyrillic: ЗАКРЫТАЕ АКЦЫЯНЕРНАЕ ТАВАРЫСТВА АБСАЛЮТБАНК); a.k.a. ZAKRYTOYE AKTSIONERNOYE OBSHCHESTVO ABSOLYUTBANK (Cyrillic: ЗАКРЫТОЕ АКЦИОНЕРНОЕ ОБЩЕСТВО АБСОЛЮТБАНК); a.k.a. ЗАО ABSOLYUTBANK (Cyrillic: ЗАО АБСОЛЮТБАНК); a.k.a. ZAT ABSALYUTBANK (Cyrillic: ЗАТ АБСАЛЮТБАНК)), 95 Nezavisimosti ave, Minsk 220023, Belarus; SWIFT/BIC ABLBY22; Website www.absolutbank.by; Organization Established Date 30 Mar 2000; Target Type Financial Institution; Registration Number 100331707 (Belarus) [BELARUS-EO].

Designated pursuant to section 1(a)(vii) of E.O. 14038 for being owned or controlled by, or having acted or purporting to act for or on behalf of, directly or indirectly, the Government of Belarus or any person whose property and interests in property are blocked pursuant to E.O. 14038.

7. CLOSED JOINT-STOCK COMPANY NEW OIL COMPANY (a.k.a. CJSC NNK; a.k.a. NOVAIA NAFTAVAIA KAMPANIA; a.k.a. ZAKRYTAYE AKTSYYANERNAYE TAVARYSTVA NOVAYA NAFTAVAYA KAMPANIYA (Cyrillic: ЗАКРЫТАЕ АКЦЫЯНЕРНАЕ ТАВАРЫСТВА НОВАЯ НАФТАВАЯ КАМПАНИЯ); a.k.a. ZAKRYTOYE AKTSIONERNOYE OBSHCHESTVO NOVAYA NEFTYANAYA KAMPANIYA (Cyrillic: ЗАКРЫТОЕ АКЦИОНЕРНОЕ ОБЩЕСТВО НОВАЯ НЕФТЯНАЯ КОМПАНИЯ); a.k.a. ЗАО NNK (Cyrillic: ЗАО ННК); a.k.a. ZAT NNK (Cyrillic: ЗАТ ННК); a.k.a. "NEW OIL COMPANY"), ul. Rakovskaya, d. 14B, kab. 7 (5th floor), Minsk 220004, Belarus (Cyrillic: ул. Раковская, д. 14В, каб. 7 (5 этаж), г. Минск 220004, Беларусь); Organization Established Date 23 Mar 2020; Registration Number 193402282 (Belarus) [BELARUS-EO].

Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the energy sector of the economy of Belarus.

8. INDUSTRIAL UNITARY ENTERPRISE OIL BITUMEN PLANT (a.k.a. PROIZVODSTVENNOYE UNITARNOYE PREDPRIYATIYE NEFTEBITUMNIY ZAVOD (Cyrillic: ПРОИЗВОДСТВЕННОЕ УНИТАРНОЕ ПРЕДПРИЯТИЕ НЕФТЕБИТУМНЫЙ ЗАВОД); a.k.a. UNITARNAYE PRADPRYEMSTVA NAFTABITUMNY ZAVOD (Cyrillic: УНИТАРНАЕ ПРАДПРЫЕМСТВА НАФТАБИТУМНЫ ЗАВОД); a.k.a. UNITARNOYE PREDPRIYATIYE NEFTEBITUMNIY ZAVOD (Cyrillic: УНИТАРНОЕ ПРЕДПРИЯТИЕ НЕФТЕБИТУМНЫЙ ЗАВОД); a.k.a. UNITARY ENTERPRISE NEFTEBITUMEN PLANT; a.k.a. UNITARY ENTERPRISE OIL BITUMEN PLANT; a.k.a. VYTVORCHAYE UNITARNAYE PRADPRYEMSTVA NAFTABITUMNY ZAVOD (Cyrillic: ВЫТВОРЧАЕ ЎНИТАРНАЕ ПРАДПРЫЕМСТВА НАФТАБИТУМНЫ ЗАВОД)), village Koleina, Lyadenskiy council, Chervenskiy district, Minsk oblast 223231, Belarus (Cyrillic: д. Колеина, Ляденский сельсовет, Червенский район, Минская область 223231, Belarus); Organization Established Date 23 Jun 2004; Registration Number 690296283 (Belarus) [BELARUS-EO].

Designated pursuant to section 1(a)(vii) of E.O. 14038 for being owned or controlled by, or having acted or purporting to act for or on behalf of, directly or indirectly, the Government of Belarus or any person whose property and interests in property are blocked pursuant to E.O. 14038.

9. LIMITED LIABILITY COMPANY NEW OIL COMPANY EAST (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ НОВАЯ НЕФТЯНАЯ КОМПАНИЯ ВОСТОК) (a.k.a. LLC NNK EAST (Cyrillic: ООО НК ВОСТОК)), ul. Poltavskaya, dom 8A, pomeshchenie 12, Smolensk, Smolensk Oblast 214025, Russia (Cyrillic: ул. Полтавская, дом 8А, помещение 12, г. Смоленск, Смоленская Область 214025, Russia); Organization Established Date 27 Nov 2020; Tax ID No. 6732204331 (Russia); Registration Number 1206700019041 (Russia) [BELARUS-EO].

Designated pursuant to section 1(a)(vii) of E.O. 14038 for being owned or controlled by, or having acted or purporting to act for or on behalf of, directly or indirectly, the Government of Belarus or any person whose property and interests in property are blocked pursuant to E.O. 14038.

10. NOVOPOLOTSK LIMITED LIABILITY COMPANY INTERSERVICE (a.k.a. INTERSERVIS NOVOPOLOTSKOE LLC; a.k.a. LIMITED LIABILITY COMPANY INTERSERVICE; a.k.a. NOVOPOLOTSKOYE OBSHCHESTVO S OGRANICHENNOY OTVESTVENNOSTYU INTERSERVIS (Cyrillic: НОВОПОЛОЦКОЕ ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ИНТЕРСЕРВИС); a.k.a. ООО INTERSERVIS (Cyrillic: ООО ИНТЕРСЕРВИС); a.k.a. ТАА INTERSERVIS (Cyrillic: ТАА ІНТЭРСЭРВІС); a.k.a. TAVARYSTVA Z ABMEZHAVANAY ADKAZNASTSYU INTERSERVIS (Cyrillic: ТАВАРЫСТВА З АБМЕЖАВАНАЙ АДКАЗНАСЦЮ ІНТЭРСЭРВІС); a.k.a. "INTERSERVICE"; a.k.a. "LLC INTERSERVICE"), ul. Molodezhnaya, d. 7, kom. 110, Novopolotsk, Vitebsk oblast 211440, Belarus (Cyrillic: ул. Молодежная, д. 7, ком. 110, г. Новополоцк, Витебская область 211440, Belarus); Organization Established Date 13 May 1998; Registration Number 300577484 (Belarus) [BELARUS-EO].

Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the energy sector of the economy of Belarus.

11. OPEN JOINT-STOCK COMPANY GRODNO TOBACCO FACTORY NEMAN (a.k.a. ААТ НРОДЗЕНСКАЯ ТЫТУНОВАЯ ФАБРЫКА НЕМАН (Cyrillic: ААТ ГРОДЗЕНСКАЯ ТЫТУНЁВАЯ ФАБРЫКА НЕМАН); a.k.a. АДКРЫТАЕ АКЦЫЯНЕРНАЕ ТАВАРЫСТВА НРОДЗЕНСКАЯ ТЫТУНОВАЯ ФАБРЫКА НЕМАН (Cyrillic: АДКРЫТАЕ АКЦЫЯНЕРНАЕ ТАВАРЫСТВА ГРОДЗЕНСКАЯ ТЫТУНЁВАЯ ФАБРЫКА НЕМАН); a.k.a. GRODNO TOBACCO FACTORY NEMAN; a.k.a. GTF NEMAN; a.k.a. НРОДНА ТОВАССО ФАКТОРЫ НЕМАН; a.k.a. ОАО ГРОДНЕНСКАЯ ТАВАЧНАЯ ФАБРЫКА НЕМАН (Cyrillic: ОАО ГРОДНЕНСКАЯ ТАБАЧНАЯ ФАБРЫКА НЕМАН); a.k.a. OJSC GRODNO TOBACCO FACTORY NEMAN; a.k.a. ОТКРЫТОЕ АКЦИОНЕРНОЕ ОБШЧЕСТВО ГРОДНЕНСКАЯ ТАВАЧНАЯ ФАБРЫКА НЕМАН)), ul. Ordzhonikidze, d. 18, Grodno, Grodnenskaya Oblast 230771, Belarus (Cyrillic: ул. Орджоникидзе, д. 18, г. Гродно, Гродненская область 230771, Belarus); Organization Established Date 29 Dec 1996; Registration Number 500047627 (Belarus) [BELARUS-EO].

Designated pursuant to section 1(a)(iv) and section 1(a)(vii) of E.O. 14038 for operating or having operated in the tobacco products sector of the economy of Belarus, and for being owned or controlled by, or having acted or purporting to act for or on behalf of, directly or indirectly, the Government of Belarus or any person whose property and interests in property are blocked pursuant to E.O. 14038.

12. LIMITED LIABILITY COMPANY BREMINO GROUP (a.k.a. BREMINO GROUP LLC; a.k.a. ОБШЧЕСТВО С ОГРАНИЧЕНАЙ ОТВЕТСТВЕННОСЦЮ БРЕМИНО ГРУПП (Cyrillic: ОБШЧЕСТВО С ОГРАНИЧЕНАЙ ОТВЕТСТВЕННОСЦЮ БРЕМИНО ГРУПП); a.k.a. ООО BREMINO GRUPP (Cyrillic: ООО БРЕМИНО ГРУПП); a.k.a. ТАА BREMINA GRUP (Cyrillic: ТАА БРЭМИНА ГРУП); a.k.a. ТАВАРЫСТВА З АБМЕЖАВАНАЙ АДКАЗНАСЦЮ БРЭМИНА ГРУП (Cyrillic: ТАВАРЫСТВА З АБМЕЖАВАНАЙ АДКАЗНАСЦЮ БРЭМИНА ГРУП)), ul. Zavodskaya, d. 1K, pom. 1, gp. Volbasovo, Orsha district, Vitebsk oblast 211004, Belarus (Cyrillic: ул. Заводская, д. 1К, пом. 1, гп. Болбасово, Оршанский район, Витебская область 211004, Belarus); Organization Established Date 05 Nov 2013; Registration Number 691598938 (Belarus) [BELARUS-EO].

Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the transportation sector of the economy of Belarus.

13. INVESTIGATIVE COMMITTEE OF THE REPUBLIC OF BELARUS (Cyrillic: СЛЕДСТВЕННЫЙ КОМИТЕТ РЕСПУБЛИКИ БЕЛАРУСЬ) (a.k.a. BELARUSIAN INVESTIGATIVE COMMITTEE; a.k.a. INVESTIGATIVE COMMITTEE OF BELARUS; a.k.a. SLEDSTVENNIY KOMITET RESPUBLIKI BELARUS), Frunze St., bldg. 19, Minsk 220034, Belarus; Organization Established Date 12 Sep 2011; Target Type Government Entity [BELARUS-EO].

Designated pursuant to section 1(a)(ii) of E.O. 14038 for being a political subdivision, agency, or instrumentality of the Government of Belarus.

14. DANA HOLDINGS LIMITED (a.k.a. DANA HOLDINGS (Cyrillic: ДАНА ХОЛДИНГС)); a.k.a. DANA KHOLDINGZ (Cyrillic: ДАНА ХОЛДИНГЗ)), Cronos Court, Flat 21, 66 Arch. Makariou III, Nicosia 1077, Cyprus; Organization Established Date 20 Feb 2013; Registration ID HE 319556 (Cyprus) [BELARUS-EO].

Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the construction sector of the economy of Belarus.

15. FOREIGN LIMITED LIABILITY COMPANY DANA ASTRA (a.k.a. FLLC DANA ASTRA; a.k.a. INOSTRANNOYE OBSHCHESTVO S OGRANICHENNOY OTVETSTVENNOSTYU DANA ASTRA (Cyrillic: ИНОСТРАННОЕ ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ДАНА АСТРА); a.k.a. IOOO DANA ASTRA (Cyrillic: IOOO ДАНА АСТРА); a.k.a. ZAMEZHNAYE TAVARYSTVA Z ABMEZHAVANAY ADKAZNASTSYU DANA ASTRA (Cyrillic: ЗАМЕЖНАЕ ТАВАРЫСТВА З АБМЕЖАВАНАЙ АДКАЗНАСЦЮ ДАНА АСТРА); a.k.a. ZTAA DANA ASTRA (Cyrillic: ЗТАА ДАНА АСТРА)), ul. Petra Mstislavtsa, d. 9, пом. 9-13, Minsk 220076, Belarus (Cyrillic: ул. Петра Мстиславца, д. 9, пом. 9-13, г. Минск 220076, Belarus); Organization Established Date 21 Jan 2010; Registration Number 191295361 (Belarus) [BELARUS-EO].

Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the construction sector of the economy of Belarus.

16. LIMITED LIABILITY COMPANY DUBAI WATER FRONT (f.k.a. BELINTE ROBE; f.k.a. BELINTE ROBES; f.k.a. JOINT LIMITED LIABILITY COMPANY BELINTE-ROBA (Cyrillic: СОВМЕСТНОЕ ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ БЕЛИНТЕ-РОБА); a.k.a. LLC DUBAI WATER FRONT; a.k.a. OBSHCHESTVO S OGRANICHENNOY OTVETSTVENNOSTYU DUBAI VOTER FRONT (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ДУБАЙ ВОТЕР ФРОНТ); a.k.a. OOO DUBAI VOTER FRONT (Cyrillic: ООО ДУБАЙ ВОТЕР ФРОНТ); a.k.a. TAA DUBAI VOTER FRONT (Cyrillic: ТАА ДУБАЙ ВОТЭР ФРОНТ); a.k.a. TAVARYSTVA Z ABMEZHAVANAY ADKAZNASTSYU DUBAI VOTER FRONT (Cyrillic: ТАВАРЫСТВА З АБМЕЖАВАНАЙ АДКАЗНАСЦЮ ДУБАЙ ВОТЭР ФРОНТ)), ul. Petra Mstislavtsa, d. 9, пом. 10 (kabinet 34), Minsk 220114, Belarus (Cyrillic: ул. Петра Мстиславца, д. 9, пом. 10 (кабинет 34), г. Минск 220114, Belarus); Organization Established Date 30 Mar 2004; Registration Number 190527399 (Belarus) [BELARUS-EO].

Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the construction sector of the economy of Belarus.

17. LIMITED LIABILITY COMPANY EMIRATES BLUE SKY (f.k.a. FOREIGN LIMITED LIABILITY COMPANY ZOMEX INVESTMENT (Cyrillic: ИНОСТРАННОЕ ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ЗОМЕКС ИНВЕСТМЕНТ); a.k.a. LLC EMIRATES BLUE SKY; a.k.a.

OBSHCHESTVO S OGRANICHENNOY OTVETSTVENNOSTYU EMIREITS BLYU SKAI (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ЭМИРЕЙТС БЛЮ СКАЙ); a.k.a. ООО EMIREITS BLYU SKAI (Cyrillic: ООО ЭМИРЕЙТС БЛЮ СКАЙ); a.k.a. ТАА EMIREITS BLYU SKAI (Cyrillic: ТАА ЭМИРЭЙТС БЛЮ СКАЙ); a.k.a. TAVARYSTVA Z ABMEZHAVANAY ADKAZNASTSYU EMIREITS BLYU SKAI (Cyrillic: ТАВАРЫСТВА З АБМЕЖАВАНАЙ АДКАЗНАСЦЮ ЭМИРЭЙТС БЛЮ СКАЙ); f.k.a. "ZOMEX"), ul. Petra Mstislavtsa, d. 9, пом. 10-44, Minsk 220076, Belarus (Cyrillic: ул. Петра Мстиславца, д. 9, пом. 10-44, г. Минск 220076, Беларусь); Organization Established Date 08 Sep 2008; Registration ID 191061449 (Belarus) [BELARUS-EO].

Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the construction sector of the economy of Belarus.

18. BELARUSKALI OAO (Cyrillic: ОАО БЕЛАРУСЬКАЛІЙ) (a.k.a. ААТ БЕЛАРУСКАЛІЙ (Cyrillic: ААТ БЕЛАРУСЬКАЛІЙ); a.k.a. АДКРЫТАЕ АКЦЫЯНЕРНАЕ ТАВАРЫСТВА БЕЛАРУСЬКАЛІЙ) (Cyrillic: АДКРЫТАЕ АКЦЫЯНЕРНАЕ ТАВАРЫСТВА БЕЛАРУСЬКАЛІЙ); a.k.a. JSC BELARUSKALI; a.k.a. ОАО BELARUSKALI; a.k.a. OJSC BELARUSKALI; a.k.a. OPEN JOINT-STOCK COMPANY BELARUSKALI; a.k.a. ОТКРЫТОЕ АКЦИОНЕРНОЕ ОБЩЕСТВО БЕЛАРУСЬКАЛІЙ), Korzh Str., Soligorsk, Minsk Region 223710, Belarus (Cyrillic: Коржа, ул., Солигорск, Минская область 223710, Беларусь); Organization Established Date 23 Dec 1996; Registration Number 600122610 (Belarus) [BELARUS-EO].

Designated pursuant to section 1(a)(iv) and section 1(a)(vii) of E.O. 14038 for operating or having operated in the potassium chloride (potash) sector of the economy of Belarus, and for being owned or controlled by, or having acted or purporting to act for or on behalf of, directly or indirectly, the Government of Belarus or any person whose property and interests in property are blocked pursuant to E.O. 14038.

19. LIMITED LIABILITY COMPANY INTER TOBACCO (a.k.a. INTER TOBACCO; f.k.a. JOINT LIMITED LIABILITY COMPANY INTERDORS (Cyrillic: СОВМЕСТНОЕ ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ИНТЕРДОРС); a.k.a. LLC INTER TOBACCO; a.k.a. OBSHCHESTVO S OGRANICHENNOY OTVETSTVENNOSTYU INTER TOBACCO (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ИНТЕР ТОБАККО); a.k.a. ООО INTER ТОБАККО (Cyrillic: ООО ИНТЕР ТОБАККО); a.k.a. ТАА INTER ТАБАККА (Cyrillic: ТАА ІНТЭР ТАБАККА); a.k.a. TAVARYSTVA Z ABMEZHAVANAY ADKAZNASTSYU INTER ТАБАККА (Cyrillic: ТАВАРЫСТВА З АБМЕЖАВАНАЙ АДКАЗНАСЦЮ ІНТЭР ТАБАККА)), d. 131 (FEZ Minsk), Novodvorskiy village, Novodvorskiy village council, Minsk District, Minsk Oblast 223016, Belarus (Cyrillic: д. 131 (СЭЗ Минск), Новодворский сельсовет, с/с Новодворский, Минский район, Минская область 223016, Беларусь); Organization Established Date 10 Oct 2002; Registration Number 808000714 (Belarus) [BELARUS-EO].

Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the tobacco products sector of the economy of Belarus.

20. CLOSED JOINT STOCK COMPANY ENERGO-OIL (a.k.a. CJSC ENERGO-OIL; f.k.a. CLOSED JOINT-STOCK COMPANY TRAYPLENERGO (Cyrillic: СОВМЕСТНОЕ ЗАКРЫТОЕ АКЦИОНЕРНОЕ ОБЩЕСТВО ТРАЙПЛЕЭНЕРГО); a.k.a. ENERGOOIL; a.k.a. ENERGO-OIL (Cyrillic: ЭНЕРГО-ОИЛ); a.k.a. SOVMESTNOYE ZAKRYTOYE AKTSIONERNOYE OVSHCHESTVO ENERGO-OIL (Cyrillic: СОВМЕСТНОЕ ЗАКРЫТОЕ АКЦИОНЕРНОЕ ОБЩЕСТВО ЭНЕРГО-ОИЛ); a.k.a. SUMESNAYE ZAKRYTAYE AKTSYANERNAYE TAVARYSTVA ENERGA-OIL (Cyrillic: СУМЕСНАЕ ЗАКРЫТАЕ АКЦЫЯНЕРНАЕ ТАВАРЫСТВА ЭНЕРГА-ОИЛ); a.k.a. SZA O ENERGO-OIL (Cyrillic: СЗА О ЭНЕРГО-ОИЛ); a.k.a. SZAT ENERGA-OIL (Cyrillic: СЗАТ ЭНЕРГА-ОИЛ)), ul. Rakovskaya, d. 14V (3rd floor), Minsk 220004, Belarus (Cyrillic: ул. Раковская, д. 14В (3 этаж), г. Минск 220004, Belarus); Organization Established Date 24 Oct 2001; Registration Number 800011806 (Belarus) [BELARUS-EO].

Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the tobacco products sector of the economy of Belarus.

21. ADDITIONAL LIABILITY COMPANY BELNEFTEGAZ (a.k.a. ALC BELNEFTEGAZ; a.k.a. BELNEFTEGAS; a.k.a. BELNEFTEGAZ (Cyrillic: БЕЛНЕФТЕГАЗ); a.k.a. OVSHCHESTVO S DOPOLNITELNOY OTVETSTVENNOSTYU BELNEFTEGAZ (Cyrillic: ОБЩЕСТВО С ДОПОЛНИТЕЛЬНОЙ ОТВЕТСТВЕННОСТЬЮ БЕЛНЕФТЕГАЗ); a.k.a. ODO BELNEFTEGAZ (Cyrillic: ОДО БЕЛНЕФТЕГАЗ); a.k.a. TAVARYSTVA Z DADATKOVAY ADKAZNASTSYU BELNAFTANAZ (Cyrillic: ТАВАРЫСТВА З ДАДАТКОВАЙ АДКАЗНАСЦЮ БЕЛНАФТАГАЗ); a.k.a. TDA BELNAFTANAZ (Cyrillic: ТДА БЕЛНАФТАГАЗ)), ul. Azgura, d. 5, pom. 68 (kabinet 1, 1st floor), Minsk 220088, Belarus (Cyrillic: ул. Азгура, д. 5, пом. 68 (кабинет 1, 1 этаж), г. Минск 220088, Belarus); Organization Established Date 23 Mar 1995; Registration Number 100878073 (Belarus) [BELARUS-EO].

Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the transportation sector of the economy of Belarus.

Dated: August 9, 2021.

Bradley T. Smith,

Acting Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

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BILLING CODE 4810-AL-C

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons and vessel that have been placed on OFAC's List of Specially Designated Nationals and Blocked Persons (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them. The vessel placed on the SDN List has been identified as property in which a blocked person has an interest.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT:

OFAC: Andrea M. Gacki, Director, tel.: 202-622-2480; Associate Director for Global Targeting, tel.: 202-622-2420; Assistant Director for Licensing, tel.: 202-622-2480; Assistant Director for Regulatory Affairs, tel.: 202-622-4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (www.treasury.gov/ofac).

Notice of OFAC Actions

On August 13, 2021, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons and property are blocked under the relevant sanctions authorities listed below.

Individual

1. AL HABSI, Mahmood Rashid Amur (a.k.a. AL HABSI, Mahmood Rashid Amer; a.k.a. AL-HABSI, Mahmood; a.k.a. AL-HABSI, Mahmud bin Rashid), Muscat, Oman; DOB 15 Jul 1984; POB Muscat, Oman; nationality Oman; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; Passport 03785555 (Oman); National ID No. 7668871 (Oman) (individual) [SDGT] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE).

Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism" (E.O. 13224), 44 FR 49079, as amended by Executive Order 13886 of September 9, 2019, "Modernizing Sanctions To Combat Terrorism," 84 FR 48041 (E.O. 13224, as amended) for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE.

Entities

1. NIMR INTERNATIONAL L.L.C. (a.k.a. "NIMR IRAQ BRANCH"), Office No. 1, 5th Floor, Al Nadha Towers 2, Ghala Industrial Area, Muscat, Oman; 501 Al Nadha Towers 2, Building 220 Way No 5007, Muscat, Oman; PO Box 254, Muscat, Oman; Hayy al Fayha' al Amin al Dakhili Dur al Dubat. Building number 44/234, Locality No. 445, Ally No. 46, Section House No. 44/3, Third floor, Office, Basrah Province, Iraq; Dubai, United Arab Emirates; Port Um Qasr, Iraq; Additional Sanctions Information—Subject to Secondary Sanctions; Business Registration Number 1037675 (Oman); alt. Business Registration Number 5670 (Iraq) [SDGT] (Linked To: AL HABSI, Mahmood Rashid Amur).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, AL HABSI, Mahmood Rashid Amur.

2. NIMR INTERNATIONAL S.R.L., STR. Horea NR. 80–82A AP. 13, Cluj-Napoca 400001, Romania; Additional Sanctions Information—Subject to Secondary Sanctions; Business Registration Number J12/1651/2020 (Romania) [SDGT] (Linked To: AL HABSI, Mahmood Rashid Amur).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, AL HABSI, Mahmood Rashid Amur.

3. BRAVERY MARITIME CORPORATION (a.k.a. BRAVERY MARITIME CORP), Dubai, United Arab Emirates; Liberia; Additional Sanctions Information—Subject to Secondary Sanctions; Registration Country Liberia; Identification Number IMO 6161246 (Liberia) [SDGT] (Linked To: AL HABSI, Mahmood Rashid Amur).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, AL HABSI, Mahmood Rashid Amur.

4. ORBIT PETROCHEMICALS TRADING LLC (a.k.a. ORBIT PETROCHEMICALS; a.k.a. ORBIT PETROCHEMICALS LLC), P.O. Box 2800, Seeb, Muscat, Oman; Additional Sanctions Information—Subject to Secondary Sanctions; Business Registration Number 1089008 (Oman) [SDGT] (Linked To: NIMR INTERNATIONAL L.L.C.).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, NIMR INTERNATIONAL L.L.C.

On August 13, 2021, OFAC also identified the following vessel as property in which a blocked person has an interest under the relevant sanctions authority listed below:

Vessel

1. OMAN PRIDE Crude Oil Tanker Liberia flag; Additional Sanctions Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9153525 (vessel) [SDGT] (Linked To: BRAVERY MARITIME CORPORATION).

Identified pursuant to E.O. 13224, as amended, as property in which BRAVERY MARITIME CORPORATION has an interest.

Dated: August 13, 2021.

Bradley T. Smith,

Acting Director, Office of Foreign Assets Control, U.S. Department of the Treasury.
[FR Doc. 2021–17716 Filed 8–17–21; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied.

All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; or the Assistant Director for Regulatory Affairs, tel. 202–622–4855.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (www.treasury.gov/ofac).

Notice of OFAC Actions

On August 13, 2021, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. MARTINEZ FERNANDEZ, Pedro Orlando, Cuba; DOB 1971 to 1973; nationality Cuba; Gender Male (individual) [GLOMAG].

Designated pursuant to section 1(a)(iii)(B) of Executive Order 13818 of December 20, 2017, "Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption" (E.O. 13818) for having acted or purported to act for or on behalf of, directly or indirectly, the MINISTRY OF INTERIOR, a person whose property and interests in property are blocked pursuant to the Order.

2. SOTOMAYOR GARCIA, Romarico Vidal, Cuba; DOB 04 Nov 1938; POB Bartolome Maso, Granma, Cuba; nationality Cuba; Gender Male (individual) [GLOMAG].

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for having acted or purported to act for or on behalf of, directly or indirectly, the MINISTRY OF INTERIOR, a person whose property and interests in property are blocked pursuant to the Order.

Entity

1. TROPAS DE PREVENCIÓN, Cuba [GLOMAG].

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being

owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, ALVARO LOPEZ MIERA, a person whose property and interests in property are blocked pursuant to the Order.

Dated: August 13, 2021.

Bradley T. Smith,

Acting Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2021-17718 Filed 8-17-21; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Homeless Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C., App. 2., that a virtual meeting of the Advisory Committee on Homeless Veterans will be held September 14-15, 2021. The meeting sessions will begin and end each day from 12:00 p.m. to 4:00 p.m.

Eastern Standard Time (EST). The meeting sessions are open to the public.

The purpose of the Committee is to provide the Secretary of Veterans Affairs with an ongoing assessment of the effectiveness of the policies, organizational structures, and services of VA in assisting Veterans at risk of and experiencing homelessness. The Committee shall assemble, and review information related to the needs of homeless Veterans and provide advice on the most appropriate means of assisting this Veteran population. The Committee will make recommendations to the Secretary regarding such activities.

On Tuesday, September 14 and Wednesday, September 15, 2021, the agenda will include briefings from VA and other federal agencies officials regarding services for homelessness among Veterans. The Committee will also discuss topics for its annual report and recommendations to the Secretary of Veterans Affairs.

No time will be allocated at this meeting for receiving oral presentations from the public. Interested parties should provide written comments on

issues affecting homeless Veterans for review by the Committee to Leisa Davis, Designated Federal Officer, Veterans Health Administration Homeless Programs Office (11HPO), U.S. Department of Veterans Affairs, 811 Vermont Avenue NW (11HPO), Washington, DC 20420, or via email at Leisa.Davis@va.gov.

Members of the public who wish to attend should contact Leisa Davis of the Veterans Health Administration, Homeless Programs Office, at Leisa.Davis@va.gov or (202) 632-8588 no later than September 1, 2021, providing their name, professional affiliation, email address, and phone number. Attendees who require reasonable accommodations should also state so in their requests. There will also be a call-in number: 1 872-701-0185, access code: 900 779 535.

Dated: August 13, 2021.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2021-17730 Filed 8-17-21; 8:45 am]

BILLING CODE P



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Part II

Department of Energy

10 CFR Part 431

Energy Conservation Program: Energy Conservation Standards for
Commercial Prerinse Spray Valves; Proposed Rule

DEPARTMENT OF ENERGY**10 CFR Part 431**

[EERE-2019-BT-STD-0034]

RIN 1905-AE56

Energy Conservation Program: Energy Conservation Standards for Commercial Prerinse Spray Valves

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notification of proposed determination and request for comment.

SUMMARY: The Energy Policy and Conservation Act, as amended (“EPCA”), prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including commercial prerinse spray valves (“CPSVs”). EPCA also requires the U.S. Department of Energy (“DOE” or “the Department”) to periodically determine whether more-stringent, amended standards would be technologically feasible and economically justified, and would result in significant energy savings. In this notification of proposed determination (“NOPD”), DOE has initially determined that amended energy conservation standards for commercial prerinse spray valves are not needed. DOE requests comment on this proposed determination and the associated analyses and results.

DATES:

Meeting: DOE will hold a webinar on Wednesday, September 1, 2021, from 10:00 a.m. to 3:00 p.m. See section VII, “Public Participation,” for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

Comments: Written comments and information are requested and will be accepted on or before October 18, 2021. See section VII, “Public Participation,” for details.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at www.regulations.gov. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments by email to the following address: CPSV2019STD0034@ee.doe.gov. Include a docket number EERE-2019-BT-STD-0034 and/or RIN number 1904-AE56 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and

avoid the use of special characters or any form of encryption.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, DOE has found it necessary to make temporary modifications to the comment submission process in light of the ongoing Covid-19 pandemic. DOE is currently accepting only electronic submissions at this time. If a commenter finds that this change poses an undue hardship, please contact Appliance and Equipment Standards Program staff at (202) 586-1445 to discuss the need for alternative arrangements. Once the Covid-19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

No telefacsimiles (faxes) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section VII of this document.

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts (if one is held), comments, and other supporting documents/materials, is available for review at www.regulations.gov. All documents in the docket are listed in the www.regulations.gov index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at <https://www.regulations.gov/docket/EERE-2019-BT-STD-0034>. The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section VII, “Public Participation,” for further information on how to submit comments through www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE-5B, 1000 Independence Avenue SW, Washington, DC 20585-0121. *Email:* ApplianceStandardsQuestions@ee.doe.gov.

Ms. Kathryn McIntosh, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue SW, Washington, DC, 20585-0121. Telephone: (202) 586-2002. *Email:* Kathryn.McIntosh@hq.doe.gov.

For further information on how to submit a comment or review other public comments and the docket contact

the Appliance and Equipment Standards Program staff at (202) 287-1445 or by email: ApplianceStandardsQuestions@ee.doe.gov.

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I. Synopsis of the Proposed Determination

Title III, Part B¹ of EPCA,² established the Energy Conservation Program for Consumer Products Other Than Automobiles. (42 U.S.C. 6291–6309) These products include commercial prerinse spray valves, the subject of this NOPD.³

DOE is issuing this NOPD pursuant to the EPCA requirement that not later than 6 years after issuance of any final rule establishing or amending a

¹ For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

² All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020).

³ Because Congress included commercial prerinse spray valves in Part B of Title III of EPCA, the consumer product provisions of Part B (not the industrial equipment provisions of Part C) apply to commercial prerinse spray valves. However, because commercial prerinse spray valves are commonly considered to be commercial equipment, as a matter of administrative convenience and to minimize confusion among interested parties, DOE placed the requirements for commercial prerinse spray valves into subpart O of 10 CFR part 431. Part 431 contains DOE regulations for commercial and industrial equipment. DOE refers to commercial prerinse spray valves as either “products” or “equipment.”

standard, DOE must publish either a notification of determination that standards for the product do not need to be amended, or a notice of proposed rulemaking (“NOPR”) including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m))

For this proposed determination, DOE analyzed commercial prerinse spray valves subject to standards specified in title 10 of the Code of Federal Regulations (“CFR”) § 431.266.

DOE first analyzed the technological feasibility of more energy (water) efficient commercial prerinse spray valves and commercial prerinse spray valves with lower energy use. For those commercial prerinse spray valves for which DOE determined higher standards to be technologically feasible, DOE estimated energy savings that would result from potential energy conservation standards by conducting a national impacts analysis (“NIA”). DOE evaluated whether higher standards would be cost effective by conducting life-cycle cost (“LCC”) and payback period (“PBP”) analyses and estimated the net present value (“NPV”) of the total costs and benefits experienced by consumers.

Based on the results of the analyses, summarized in section V of this document, and comments received in response to the early assessment request for information (“RFI”) published in June 2020 (“June 2020 RFI”; see 85 FR 35383 (Jun. 10, 2020)), DOE has tentatively determined that current standards for commercial prerinse spray valves do not need to be amended because any potential benefits are outweighed by the risk of increased energy and water usage due to the increased risk of product switching, costs, and additional burden to manufacturers.

II. Introduction

The following section briefly discusses the statutory authority underlying this proposed determination, as well as some of the historical background relevant to the establishment of standards for commercial prerinse spray valves.

A. Authority

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part B of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles. These products include commercial prerinse spray valves, the subject of this document. (42 U.S.C. 6291(33)) EPCA

prescribed energy conservation standards (in terms of flow rate) for these products (42 U.S.C. 6295(dd)) and directs DOE to conduct future rulemakings to determine whether to amend these standards. (42 U.S.C. 6295(m))

The energy conservation program under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) the establishment of Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. (42 U.S.C. 6295(o)(3)(A) and 42 U.S.C. 6295(r)) Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c) and 42 U.S.C. 6295(s)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. (42 U.S.C. 6295(s)) The DOE test procedures for commercial prerinse spray valves appear at 10 CFR 431.264.

Federal energy conservation requirements generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) California, however, has a statutory exemption to preemption for commercial prerinse spray valve standards adopted by the California Energy Commission before January 1, 2005. (42 U.S.C. 6297(c)(7)) As a result, while Federal commercial prerinse spray valve standards apply in California, California’s commercial prerinse spray valve standards also apply for standards adopted before January 1, 2005, as they were exempt from preemption. In 2018, California revised its regulations so that the maximum flow rate requirements align with those implemented by DOE for commercial prerinse spray valves. DOE may, however, grant waivers of Federal preemption for particular State laws or

regulations, in accordance with the procedures and other provisions set forth under EPCA. (See 42 U.S.C. 6297(d))

Pursuant to the amendments contained in the Energy Independence and Security Act of 2007 (“EISA 2007”), Public Law 110–140, any final rule for new or amended energy conservation standards promulgated after July 1, 2010, is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) Because commercial prerinse spray valves only consume energy and water in active mode, DOE’s test procedures for commercial prerinse spray valves do not address standby mode and off mode energy use as they are not applicable for this product.

DOE must periodically review its already established energy conservation standards for a covered product no later than 6 years from the issuance of a final rule establishing or amending a standard for a covered product. (42 U.S.C. 6295(m)) This 6-year look-back provision requires that DOE publish either a determination that standards do not need to be amended or a NOPR, including new proposed standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1)(A)–(B)) EPCA further provides that, not later than 3 years after the issuance of a final determination not to amend standards, DOE must publish either a notification of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards

(proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(3)(B)) DOE must make the analysis on which a determination is based publicly available and provide an opportunity for written comment. (42 U.S.C. 6295(m)(2))

A determination that amended standards are not needed must be based on consideration of whether amended standards will result in significant conservation of energy, are technologically feasible, and are cost effective. (42 U.S.C. 6295(m)(1)(A) and 42 U.S.C. 6295(n)(2)) Additionally, any new or amended energy conservation standard prescribed by the Secretary of Energy (“Secretary”) for any type (or class) of covered product shall be designed to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Among the factors DOE considers in evaluating whether a proposed standard level is economically justified includes whether the proposed standard at that level is cost-effective, as defined under 42 U.S.C. 6295(o)(2)(B)(i)(II). Under 42 U.S.C. 6295(o)(2)(B)(i)(II), an evaluation of cost-effectiveness requires DOE to consider savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard. (42 U.S.C. 6295(n)(2) and 42 U.S.C. 6295(o)(2)(B)(i)(II))

DOE is publishing this NOPD in satisfaction of the 6-year review requirement in EPCA.

B. Background

1. Current Standards

In a final rule published on January 27, 2016, (“January 2016 Final Rule”), DOE prescribed the current energy

conservation standards for commercial prerinse spray valves manufactured on and after January 28, 2019. 81 FR 4748. These standards prescribe a maximum flow rate in gallons per minute (“gpm”) for each product class and are set forth in DOE’s regulations at 10 CFR 431.266 and repeated in Table II.1.

TABLE II.1—FEDERAL ENERGY CONSERVATION STANDARDS FOR COMMERCIAL PRERINSE SPRAY VALVES

Product class (spray force in ounce-force, ozf)	Flow rate (gpm)
Product Class 1 (≤5.0 ozf)	1.00
Product Class 2 (>5.0 ozf and ≤8.0 ozf)	1.20
Product Class 3 (>8.0 ozf)	1.28

2. History of Standards Rulemakings for Commercial Prerinse Spray Valves

In support of the present review of the GPSV energy conservation standards, on June 10, 2020, DOE published the June 2020 RFI, which identified various issues on which DOE sought comment to inform its determination of whether the standards need to be amended. 85 FR 35383. DOE was specifically interested in collecting data and information that could enable the agency to determine whether it should propose a “no new standard” determination because a more stringent standard: (1) Would not result in a significant savings of energy, (2) is not technologically feasible, (3) is not economically justified, or (4) any combination of foregoing. *Id.* at 85 FR 35385. In response to a comment received, DOE published on July 20, 2020, a reopening of public comment period extending the comment period for an additional 30 days. 85 FR 43748.

DOE received comments in response to the June 2020 RFI from the interested parties listed in Table II.2.

TABLE II.2—JUNE 2020 RFI WRITTEN COMMENTS

Organization(s)	Reference in this NOPD	Organization type
Appliance Standards Awareness Project	ASAP	Efficiency Organization.
Northwest Energy Efficiency Alliance	NEEA	Efficiency Organization.
Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison.	CA IOUs	Utilities.
Plumbing Manufacturers Inc	PMI	Trade Association.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.⁴

III. General Discussion

DOE developed this proposed determination after considering comments, data, and information from interested parties that represent a variety of interests. This document addresses issues raised by these commenters.

A. Product Classes and Scope of Coverage

When evaluating and establishing energy conservation standards, DOE divides covered products into product classes by the type of energy used or by capacity or other performance-related features that justify differing standards. In making a determination whether a performance-related feature justifies a different standard, DOE must consider such factors as the utility of the feature to the consumer and other factors DOE determines are appropriate. (42 U.S.C. 6295(q)) The CPSV classes for this proposed determination are discussed in further detail in section IV.A.4 of this document. This proposed determination covers commercial prerinse spray valves defined as a handheld device that has a release-to-close valve and is suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment. 10 CFR 431.262 The scope of coverage is discussed in further detail in section IV.A.1 of this document.

B. Test Procedure

EPCA sets forth generally applicable criteria and procedures for DOE's adoption and amendment of test procedures. (42 U.S.C. 6293) Manufacturers of covered products must use these test procedures to certify to DOE that their product complies with energy conservation standards and to quantify the efficiency of their product. (42 U.S.C. 6295(s) and 42 U.S.C. 6293(c)) DOE will finalize a test procedure establishing methodologies used to evaluate proposed energy conservation standards at least 180 days prior to publication of a NOPR proposing new or amended energy conservation standards. Section 8(d) of appendix A to 10 CFR part 430, subpart

C ("Process Rule"). DOE's current energy conservation standards for commercial prerinse spray valves are expressed in terms of gpm. 10 CFR 431.266

DOE published a test procedure final rule on December 30, 2015, which incorporated by reference the 2013 version of ASTM International ("ASTM") Standard F2324 ("ASTM F2324-13"). 80 FR 81441 ("December 2015 Final Rule"). In the December 2015 Final Rule, DOE also revised the definition of "commercial prerinse spray valve," made minor changes to the DOE flow rate test method, and added a definition and test method for "spray force." The test procedures for commercial prerinse spray valves are codified in 10 CFR 431.264.

On June 5, 2020, DOE published an RFI soliciting public comment and data on all aspects of the existing DOE test procedure for commercial prerinse spray valves, including (1) the scope and definition of the test procedure, (2) incorporation of the reaffirmed industry standard, and (3) the representativeness of the test water pressure. 85 FR 34541 On May 20, 2021 DOE published a test procedure NOPR, which proposed updates to incorporate the 2019 reaffirmed version of ASTM Standard F2324, ASTM F2324-13 (2019). 86 FR 27298, 27302. DOE has initially determined that this change to the version referenced would not impact the measured flow rate. *Id.* DOE also proposed revising the definition of "commercial prerinse spray valve" to clarify which valves are covered products but did not propose to change the scope of valves that are covered. *Id.*

C. Technological Feasibility

1. General

In evaluating potential amendments to energy conservation standards, DOE conducts a screening analysis based on information gathered on all current technology options and prototype designs that could improve the efficiency of the products or equipment that are the subject of the determination. As the first step in such an analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those means for improving efficiency are technologically feasible. DOE considers technologies incorporated in commercially available products or in working prototypes to be technologically feasible. Sections 6(c)(3)(i) and 7(b)(1) of appendix A to 10 CFR part 430, subpart C.

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) Practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; (3) adverse impacts on health or safety; and (4) unique-pathway proprietary technologies. Sections 6(c)(3)(ii)-(v) and 7(b)(2)-(5) of appendix A to 10 CFR part 430, subpart C. Section IV.A.3 of this document discusses the results of the screening analysis for commercial prerinse spray valves, particularly the designs DOE considered, those it screened out, and those that are the basis for the standards considered in this proposed determination. For further details on the screening analysis for this proposed determination, see chapter 4 of the NOPD technical support document ("TSD").

2. Maximum Technologically Feasible Levels

When DOE proposes to adopt an amended standard for a type or class of covered product, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such a product. (42 U.S.C. 6295(p)(1)) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible ("max-tech") improvements in energy efficiency for commercial prerinse spray valves, using the design parameters for the most efficient products available on the market or in working prototypes. The max-tech levels that DOE determined for this analysis are described in section IV.B of this document and in chapter 5 of the NOPD TSD.

D. Energy Savings

1. Determination of Savings

For each efficiency level ("EL") evaluated, DOE projected energy savings from application of the efficiency level to the commercial prerinse spray valves purchased in the 30-year period that begins in the assumed year of compliance with the potential standards (2027-2056). The savings are measured over the entire lifetime of the commercial prerinse spray valves purchased in the previous 30-year period. DOE quantified the energy savings attributable to each efficiency level as the difference in energy consumption between each standards case and the no-new-standards case. The no-new-standards case represents a

⁴ The parenthetical reference provides a reference for information located in the docket. (Docket No. EERE-2019-BT-STD-0034, which is maintained at <https://www.regulations.gov/docket/EERE-2019-BT-STD-0034>). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

projection of energy consumption that reflects how the market for a product would likely evolve in the absence of amended energy conservation standards.

DOE used its NIA spreadsheet model to estimate national energy savings (“NES”) from potential amended or new standards for commercial prerinse spray valves. The NIA spreadsheet model (described in section IV.G of this document) calculates energy savings in terms of site energy, which is the energy directly consumed by products at the locations where they are used. For electricity, DOE reports NES in terms of both site and primary energy savings, which is the savings in the energy that is used to generate and transmit the site electricity. DOE also calculates NES in terms of full-fuel-cycle (“FFC”) energy savings. The FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.*, coal, natural gas, petroleum fuels), and thus presents a more complete picture of the impacts of energy conservation standards.⁵ DOE’s approach is based on the calculation of an FFC multiplier for each of the energy types used by covered products or equipment. For more information on FFC energy savings, see section IV.G of this document.

2. Significance of Savings

In determining whether amended standards are needed, DOE must consider whether such standards will result in significant conservation of energy. (42 U.S.C. 6295(m)(1)(A)) On February 14, 2020, DOE published an update to its procedures, interpretations, and policies for consideration in new or revised energy conservation standards and test procedure, *i.e.*, “Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Certain Commercial/Industrial Equipment” (see 10 CFR part 430, subpart C, appendix A).⁶ 85 FR 8626. In

the updated Process Rule, DOE established a significance threshold for energy savings under which DOE employs a two-step approach that considers both an absolute site energy savings threshold and a threshold that is a percent reduction in the energy use of the covered product. Section 6(a) of the appendix A to 10 CFR part 430, subpart C.

DOE first evaluates the projected energy savings from a potential max-tech standard over a 30-year period against a 0.3 quadrillion British thermal units (“quads”) of site energy savings threshold. Section 6(b)(2) of appendix A to 10 CFR part 430, subpart C. If the 0.3-quad threshold is not met, DOE then compares the max-tech savings to the total energy usage of the covered product to calculate a percentage reduction in energy usage. Section 6(b)(3) of appendix A to 10 CFR part 430, subpart C. If this comparison does not yield a reduction in site energy use of at least 10 percent over a 30-year period, the analysis will end and DOE will propose to determine that no significant energy savings would likely result from setting new or amended standards. Section 6(b)(4) of appendix A to 10 CFR part 430, subpart C. If either one of the thresholds is reached, DOE will conduct analyses to ascertain whether a standard can be prescribed that produces the maximum improvement in energy efficiency that is both technologically feasible and economically justified and still constitutes significant energy savings at the level determined to be economically justified. Section 6(b)(5) of appendix A to 10 CFR part 430, subpart C. This two-step approach allows DOE to ascertain whether a potential standard satisfies EPCA’s significant energy savings requirements in 42 U.S.C. 6295(o)(3)(B) to ensure that DOE avoids setting a standard that “will not result in significant conservation of energy.”

EPCA defines “energy efficiency” as the ratio of the useful output of services from a consumer product to the *energy use* of such product, measured

according to the Federal test procedures. (42 U.S.C. 6291(5), *emphasis added*) EPCA defines “energy use” as the quantity of energy directly consumed by a consumer product at point of use, as measured by the Federal test procedures. (42 U.S.C. 6291(4)) Further, EPCA uses a household energy consumption metric as a threshold for setting standards for new covered products. (42 U.S.C. 6295(l)(1)) Given this context, DOE relies on site energy as the appropriate metric for evaluating the significance of energy savings.

DOE noted in the June 2020 RFI that the significant water savings requirement does not apply to prerinse spray valves. 85 FR 35383, 35385. DOE cites 42 U.S.C. 6295(o)(3)(B), which specifies significant conservation of water for only “showerheads, faucets, water closets, or urinals”. DOE also stated that the prohibition on amending a standard to allow greater water use does not apply to prerinse spray valves. *Id.* DOE cites 42 U.S.C. 6295(o)(1), which similarly prohibits the prescription of any amended standard that increases the maximum allowable water use of only showerheads, faucets, water closets, or urinals.

The CA IOUs commented that because commercial prerinse spray valves use heated water, any standard that increased the flow rate would be in conflict with EPCA’s prohibition on increasing maximum allowable energy use as specified in 42 U.S.C. 6295(o)(1). (CA IOUs, No. 6 at p. 4)

As discussed, DOE is not proposing to amend the energy conservation standards for commercial prerinse spray valves (*i.e.*, DOE is not proposing to amend the maximum flow rates). For this proposed determination, DOE analyzed the maximum possible savings relative to the potential for consumers to switch to equipment or products with a higher flow rate, such as faucets, in response to more stringent standards.

E. Cost Effectiveness

In making a determination of whether amended energy conservation standards are needed, EPCA requires DOE to consider the cost effectiveness of amended standards in the context of the savings in operating costs throughout the estimated average life of the covered product compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered product that are likely to result from a standard. (42 U.S.C. 6295(m)(1)(A), 42 U.S.C. 6295(n)(2), and 42 U.S.C. 6295(o)(2)(B)(i)(II))

In determining cost effectiveness of amending standards for commercial prerinse spray valves, DOE conducted

⁵ The FFC metric is discussed in DOE’s statement of policy and notice of policy amendment. 76 FR 51282 (Aug. 18, 2011), as amended at 77 FR 49701 (Aug. 17, 2012).

⁶ On January 20, 2021, the President issued Executive Order 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*. Exec. Order No. 13,990, 86 FR 7037 (Jan. 25, 2021) (“E.O. 13990”). E.O. 13990 affirms the Nation’s commitment to empower our workers and communities; promote and protect our public health and the environment; and conserve our national treasures and monuments. To that end, the stated policies of E.O. 13990 include: Improving public health and protecting our environment; ensuring access to clean air and water; and reducing greenhouse gas emissions. E.O.

13990 section 1. Section 2 of E.O. 13990 directs agencies, in part, to immediately review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (“agency actions”) promulgated, issued, or adopted between January 20, 2017, and January 20, 2021, that are or may be inconsistent with, or present obstacles to, the policy set forth in the Executive Order. E.O. 13990 section 2. In addition, section 2(iii) of E.O. 13990 specifically directs DOE to, as appropriate and consistent with applicable law, publishing for notice and comment a proposed rule suspending, revising, or rescinding the updated Process Rule. In response to this directive, DOE has undertaken a review of the updated Process Rule. See, 86 FR 18901 (Apr. 12, 2021) and 86 FR 35668 (July 7, 2021).

LCC and PBP analyses that estimate the costs and benefits to users from standards. To further inform DOE's consideration of the cost effectiveness of amended standards, DOE considered the NPV of total costs and benefits estimated as part of the NIA. The inputs for determining the NPV of the total costs and benefits experienced by consumers are (1) total annual installed cost, (2) total annual operating costs (energy costs and repair and maintenance costs), and (3) a discount factor to calculate the present value of costs and savings.

F. Further Considerations

As stated previously, pursuant to EPCA, absent DOE publishing a notification of determination that energy conservation standards for commercial prerinse spray valves do not need to be amended, DOE must issue a NOPR that includes new proposed standards. (42 U.S.C. 6295(m)(1)(B)) The new proposed standards in any such NOPR must be based on the criteria established under 42 U.S.C. 6295(o) and follow the procedures established under 42 U.S.C. 6295(p). (42 U.S.C. 6295(m)(1)(B)) The criteria in 42 U.S.C. 6295(o) require that standards be designed to achieve the maximum improvement in energy efficiency, which the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In deciding whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination after receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the following seven statutory factors:

(1) The economic impact of the standard on manufacturers and consumers of the products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges for, or maintenance expenses of the covered products that are likely to result from the standard;

(3) The total projected amount of energy (or as applicable, water) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

As discussed in the January 2016 Final Rule, DOE found that amended standards at a level more stringent than those adopted would not be economically justified under the considerations of the seven factors prescribed in EPCA. 81 FR 4748, 4794. Specifically, the Secretary concluded that at the more stringent standards levels the benefits of energy savings, positive NPV of consumer benefits, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the reduction in manufacturer industry value. *Id.* Consequently, the Secretary concluded that standards more stringent than those adopted were not economically justified. *Id.* For the determination proposed in this document, DOE has considered potential manufacturer impacts associated with amended energy conservation standards (See section IV.H of this document).

IV. Methodology and Discussion of Related Comments

This section addresses the analyses DOE has performed for this proposed determination with regard to commercial prerinse spray valves. Separate subsections address each component of DOE's analyses. DOE used several analytical tools to estimate the impact of potential energy conservation standards. The first tool is a spreadsheet that calculates the LCC savings and PBP of potential energy conservation standards. The NIA uses a second spreadsheet set that provides shipments projections and calculates NES and NPV of total consumer costs and savings expected to result from potential energy conservation standards. These spreadsheet tools are available on the website: <https://www.regulations.gov/docket/EERE-2019-BT-STD-0034>.

A. Market and Technology Assessment

DOE develops information in the market and technology assessment that provides an overall picture of the market for the products concerned, including the purpose of the products, the industry structure, manufacturers, market characteristics, and technologies used in the products. This activity includes both quantitative and qualitative assessments, based primarily on publicly available information. The subjects addressed in the market and

technology assessment for this proposed determination include (1) a determination of the scope and product classes, (2) manufacturers and industry structure, (3) existing efficiency programs, (4) shipments information, (5) market and industry trends, and (6) technologies or design options that could improve the energy efficiency of commercial prerinse spray valves. The key findings of DOE's market assessment are summarized in the following sections. See chapter 3 of the NOPD TSD for further discussion of the market and technology assessment.

1. Scope of Coverage

In this analysis, DOE relied on the definition of commercial prerinse spray valves in 10 CFR 431.262, which defines commercial prerinse spray valve as “a handheld device that has a release-to-close valve and is suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment.” Any product meeting the definition of commercial prerinse spray valve is included in DOE's scope of coverage.

In response to the June 2020 RFI, NEEA and Appliance Standards Awareness Project (ASAP) commented that many valves marketed on online retailers' and manufacturers' websites appear to meet DOE's definition of a commercial prerinse spray valve but have flow rates above DOE's limits. (ASAP, No. 5 at p. 1; NEEA, No. 7 at p. 2) ASAP provided website links to products it asserted meet DOE's definition but have flow rates above DOE's energy conservation standard limits and models that are advertised as complying with DOE standards are not included in DOE's compliance database. (ASAP, No. 5 at p. 2–4) ASAP commented that the current definition means that a product does not have to be explicitly marketed as a commercial prerinse spray valve in order to be covered, so long as it is suitable for use in washing dishes. (*Id.* at p. 2)

In the May 20, 2021 CPSV test procedure NOPR, DOE addressed similar comments and proposed to update the definition to codify in the CFR existing guidance on the application of the current definition in 10 CFR 431.262. 86 FR 27298. DOE reiterated that adopting this guidance is not intended to change the scope of valves covered in the CPSV definition, only to codify existing guidance. *Id.*

2. Technology Options

In the June 2020 RFI, DOE identified several technology options that would be expected to improve the efficiency of

commercial prerinse spray valves, as measured by the DOE test procedure. The complete list of technology options identified are as follows:

- (1) Addition of flow control insert,
- (2) Smaller spray hole area,
- (3) Aerators,
- (4) Additional valves,
- (5) Changing spray hole shape, and
- (6) Venturi meter to orifice plate

nozzle geometries.⁷

DOE requested comment on the applicability of these technologies to the efficiency and performance characteristics of commercial prerinse spray valves. DOE also requested comment and data on any new technologies that should be considered in its analysis. 85 FR 35383, 35386–35387.

In response to the June 2020 RFI, PMI commented that it is not aware of any significant technological advances that would vastly alter the water and energy savings from the products currently being produced. (PMI, No. 4 at p. 1) CA IOUs commented that pressure compensating aerator (“PCA”) technology represents an opportunity for further efficiency gains from commercial prerinse spray valves and recommended DOE investigate the energy saving potential of these technologies. (CA IOUs, No. 6 at p. 1)

PCAs typically use an O-ring that compresses and relaxes in response to system pressure. When there is no pressure, the O-ring is relaxed and allows the aerator to be fully opened. As the pressure increases, the O-ring is compressed into the aerator opening to partially block water passage. This establishes an inverse relationship between the area of the aerator opening and the water pressure, and can be designed such that the water flow rate is approximately constant with pressure.

CA IOUs commented that because the flow rate of commercial prerinse spray valves varies with pressure, low water pressure can reduce user satisfaction and result in consumers trying to alter their spray valve or replace it with a higher flow-rate spray valve. (*Id.* at p. 1–2) They stated that using a PCA decouples the flow rate of commercial prerinse spray valves from water supply pressure, increasing consumer satisfaction. (*Id.* at p. 3) CA IOUs

commented that PCAs became widely adopted around 2010 and were not previously considered by DOE in the context of a CPSV rulemaking. They urged DOE to consider PCAs as a technology option in this rulemaking. (*Id.* at p. 3)

An initial review of the technology indicates that PCAs represent an opportunity to increase consumer satisfaction at low water pressure, as PCAs would ensure that consumers get their desired spray force across the entire range of in-field water pressures. However, DOE does not initially find PCAs to represent a technology option that would improve the water efficiency of commercial prerinse spray valves as measured by DOE’s test procedure. DOE’s test procedure measures flow rate and spray force at a singular, representative water pressure. Adding a PCA would not change the flow rate or spray force at DOE’s test pressure.⁸

In summary, for this analysis, DOE considers the technology options shown in Table IV.1. Detailed descriptions of these technology options can be found in chapter 3 of the NOPD TSD.

TABLE IV.1—COMMERCIAL PRERINSE SPRAY VALVES TECHNOLOGY OPTIONS

Technology Option
Addition of Flow Control Insert
Smaller Spray Hole Area
Aerators
Additional Valves
Changing Spray Hole Shape
Venturi Meter to Orifice Plate Nozzle Geometries

DOE seeks comment on its determination that PCAs would not change the flow rate or spray force at DOE’s test pressure.

3. Screening Analysis

DOE uses the following five screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

(1) *Technological feasibility.* Technologies that are not incorporated in commercial products or in working prototypes will not be considered further.

(2) *Practicability to manufacture, install, and service.* If it is determined

⁸ In the CA IOUs comment, Figure 2 also shows that at the DOE test procedure test pressure (60 pounds per square inch, or psi), the flow rate continues to be at 1.28 gpm for fixed orifice, PCA high performance, and PCA basic. (CA IOUs, No. 6 at p. 3)

that mass production and reliable installation and servicing of a technology in commercial products could not be achieved on the scale necessary to serve the relevant market at the time of the projected compliance date of the standard, then that technology will not be considered further.

(3) *Impacts on product utility or product availability.* If it is determined that a technology would have significant adverse impact on the utility of the product to significant subgroups of consumers or would result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not be considered further.

(4) *Adverse impacts on health or safety.* If it is determined that a technology would have significant adverse impacts on health or safety, it will not be considered further.

(5) *Unique-Pathway Proprietary Technologies.* If a design option utilizes proprietary technology that represents a unique pathway to achieving a given efficiency level, that technology will not be considered further due to the potential for monopolistic concerns.

Sections 6(c)(3) and 7(b) of appendix A to 10 CFR part 430, subpart C.

In summary, if DOE determines that a technology, or a combination of technologies, fails to meet one or more of the listed five criteria, it will be excluded from further consideration in the engineering analysis.

a. Screened-Out Technologies

In the June 2020 RFI, DOE presented the screened-out technology options from the January 2016 Final Rule and sought comment regarding whether these technology options would continue to be screened out. 85 FR 35383, 35387. In response to the June 2020 RFI, DOE did not receive any comments suggesting these technologies should no longer be screened out. DOE’s review of the market also suggests that these technologies are not suitable for further consideration, as discussed in chapter 4 of the TSD. Therefore, for this analysis, DOE has maintained the January 2016 Final Rule conclusions and has screened out the same technology options as presented in Table IV.2.

⁷ A venturi meter is a nozzle where the fluid accelerates through a converging cone of 15–20 degrees. An orifice plate is a flat plate with a circular hole drilled in it.

TABLE IV.2—SCREENED-OUT TECHNOLOGY OPTIONS

Screened technology option	Screening criteria (X = basis for screening out)				
	Technological feasibility	Practicability to manufacture, install, and service	Adverse impact on product utility	Adverse impacts on health and safety	Unique-pathway proprietary technologies
Addition of Flow Control Insert	X	.....	.....	.....	.....
Aerators	X	.....	.....	.....	.....
Additional Valves	X	.....	.....	.....	.....

b. Remaining Technologies

After reviewing each technology, DOE did not screen out the following technology options and considers them as design options in the engineering analysis:

- (1) Smaller spray hole area.
- (2) Changing spray hole shape, and
- (3) Venturi meter to orifice plate nozzle geometries.

DOE determined that these technology options are technologically feasible because they are being used or have previously been used in commercially available products or working prototypes. Also these remaining technology options meet the other screening criteria (*i.e.*, practicable to manufacture, install, and service and do not result in adverse impacts on consumer utility, product availability, health, or safety). For additional details, see chapter 4 of the NOPD TSD.

4. Product Classes

In general, when evaluating and establishing energy conservation standards, DOE divides the covered product into classes by (1) the type of energy used, (2) the capacity of the product, or (3) any other performance-related feature that affects energy efficiency and justifies different standard levels, considering factors such as consumer utility. (42 U.S.C. 6295(q))

For commercial prerinse spray valves, the current energy conservation standards specified in 10 CFR 431.266 are based on three product classes determined according to spray force, which is a performance-related feature that provides utility to the consumer. “Spray force” is defined as the amount of force exerted onto the spray disc, measured in ounce-force (“ozf”). 10 CFR 431.262 Table IV.3 lists the current three product classes for commercial prerinse spray valves.

TABLE IV.3—CURRENT COMMERCIAL PRERINSE SPRAY VALVE PRODUCT CLASSES

Product class	Spray force in ounce-force, ozf
Product Class 1	≤5.0 ozf.
Product Class 2	>5.0 ozf and ≤8.0 ozf.
Product Class 3	>8.0 ozf.

These product classes were based on previous market research that identified three distinct end-user applications requiring differing amounts of spray force: (1) Cleaning delicate glassware and removing loose food particles from dishware (which require the least amount of spray force), (2) cleaning wet food, and (3) cleaning baked-on foods (which requires the greatest amount of spray force). 81 FR 4748, 4758–4759.

In the June 2020 RFI, DOE sought feedback regarding whether there had been any changes to the end-user applications of each product classes and if any of the existing product classes should be merged or separated. Further, DOE requested any data on additional performance-related features, in addition to spray force, that provide unique consumer utility that would justify additional product classes. 85 FR 35386.

In response, PMI commented that it was not aware of any data or market feedback that would warrant changes to the end-user applications of each product class or changes to the current product class structure. (PMI, No. 4 at p. 4) Further, it was not aware of any data or market feedback that would warrant additional product classes. (*Id.*) DOE did not receive any comments or data suggesting that changes to the existing product class structure were needed and therefore maintained the existing product class structure in this analysis.

5. Market Assessment

In the June 2020 RFI, DOE stated that preliminary research indicated some of the “shower-type” basic models since the January 2016 Final Rule had been redesigned to have flow rates and spray

force in product class 2 (≤5.0 ozf and ≤8.0 ozf), with few commercial prerinse spray valves remaining in product class 3 (≤8.0 ozf). 85 FR 35383, 35386.

In response to the RFI, PMI commented that the total number of commercial prerinse spray valves that meet the Environmental Protection Agency’s (“EPA’s”) WaterSense standards continues to grow. (PMI, No. 4 at p. 3) It further commented that industry needs more time to evaluate the impact the current DOE standards have had on the market. (*Id.* at p. 1) Specifically, PMI stated that the relatively recent compliance date has not allowed manufacturers time to recoup their investments associated with the most recent redesigns, and some manufacturers and distributors need time to sell-through the existing products they have in stock. (*Id.* at p. 4) PMI commented in support of a no-new-standards determination due to any improvement in efficiency being negligible when compared to the current standard’s improvement from the previous 1.6 gpm flow rate limitation. (*Id.* at p. 5)

DOE notes that EPA’s WaterSense program was sunset in 2019, with the implementation of the energy conservation standard prescribed in the January 2016 Final Rule, after participants expressed an “overwhelming preference for canceling the WaterSense specification, indicating limited potential for further efficiency.”⁹

NEEA reiterated DOE’s observation that significantly fewer spray valves are currently manufactured in product class 3 and expressed concern that the absence of high flow-rate valves could drive certain manufacturers to select out of scope products with flow rates above energy conservation standards. (NEEA, No. 7 at p. 3) NEEA recommended DOE investigate any potential product class switching and any switching to equipment that may be out of scope. (*Id.*

⁹EPA’s notification of sunset of the WaterSense Specification for commercial prerinse spray valves can be found at the following link: <https://www.epa.gov/watersense/commercial-pre-rinse-spray-valves-specification-and-certification>.

at p. 4) DOE modeled potential product class switching and any switching to out-of-scope equipment as discussed in section IV.F of this document.

For this proposed determination, DOE initially relied on government databases, retail listings, and industry publications (e.g., manufacturer catalogs) to assess the overall state of the industry. DOE used this market analysis to generate the shipments analysis, discussed in section IV.F of this document. DOE maintained the nearest neighbor switching assumptions from the previous rulemaking, as discussed in section IV.F of this document.

B. Engineering Analysis

The purpose of the engineering analysis is to establish the relationship between the efficiency and cost of commercial prerinse spray valves. There are two elements to consider in the engineering analysis: The selection of efficiency levels to analyze (i.e., the “efficiency analysis”) and the determination of product cost at each efficiency level (i.e., the “cost analysis”). In determining the performance of higher-efficiency products, DOE considers technologies and design option combinations not eliminated by the screening analysis. For each product class, DOE estimates the baseline cost, as well as the incremental cost for the product at efficiency levels above the baseline. The output of the engineering analysis is a set of cost-efficiency “curves” that are used in downstream analyses (i.e., the LCC and PBP analyses and the NIA).

NEEA recommended DOE set the efficiency standards to the maximum available flow rate currently on the market in each product class. (NEEA, No. 7 at p. 4) As described in the following analyses, DOE evaluated the savings potential of higher efficiency standards.

1. Efficiency Analysis

DOE typically uses one of two approaches to develop energy efficiency levels for the engineering analysis: (1) Relying on observed efficiency levels in the market (i.e., the efficiency-level approach), or (2) determining the incremental efficiency improvements associated with incorporating specific design options to a baseline model (i.e., the design-option approach). Using the efficiency-level approach, the efficiency

levels established for the analysis are determined based on the market distribution of existing products (in other words, based on the range of efficiencies and efficiency-level “clusters” that already exist on the market). Using the design option approach, the efficiency levels established for the analysis are determined through detailed engineering calculations and/or computer simulations of the efficiency improvements from implementing specific design options that have been identified in the technology assessment. DOE may also rely on a combination of these two approaches. For example, the efficiency-level approach (based on actual products on the market) may be extended using the design option approach to interpolate to define “gap fill” levels (to bridge large gaps between other identified efficiency levels) and/or to extrapolate to the “max-tech” level (particularly in cases where the “max tech” level exceeds the maximum efficiency level currently available on the market).

In this proposed determination, similar to the January 2016 Final Rule, DOE is adopting a design-option approach. The analysis is performed in terms of incremental increases in efficiency (decreases in flow rate) due to implementation of selected design options.

a. Baseline Efficiency Levels

For each product class, DOE generally selects a baseline model as a reference point for each class, and measures changes resulting from potential energy conservation standards against the baseline. The baseline model in each product class represents the characteristics of a product typical of that class (e.g., capacity, physical size). Generally, a baseline model is one that just meets current energy conservation standards, or, if no standards are in place, the baseline is typically the most common or least efficient unit on the market.

The current minimum energy conservation standards represent the baseline efficiency levels for each product class. The current standards for each product class are based on flow rate in gpm. DOE requested comment in the June 2020 RFI regarding whether using the current energy conservation standards for commercial prerinse spray

valves are an appropriate baseline efficiency level. 85 FR 35383, 35388. DOE did not receive any comments on this issue. Therefore, DOE is using the current energy conservation standards as the baseline efficiency level in this analysis.

b. Higher Efficiency Levels

As part of DOE’s analysis, the maximum available efficiency level is the highest efficiency (i.e., lowest water use in a given product class) unit currently available on the market. DOE also defines a “max-tech” efficiency level to represent the maximum possible efficiency for a given product.

In the June 2020 RFI, DOE presented the max-tech efficiency level from the January 2016 Final Rule and requested comment as to whether these max-tech options were appropriate. 85 FR 35383, 35388. DOE did not receive any comment suggesting they were not. Based on a review of recent manufacturer catalogs, DOE identified a new max-tech commercial prerinse spray valve for product class 1, which has a flow rate of 0.45 gpm as compared to the flow rate of 0.62 gpm presented in the June 2020 RFI.¹⁰ As such, DOE has used the max-tech efficiency level flow rates presented in Table IV.4 in this analysis.

TABLE IV.4—MAXIMUM EFFICIENCY LEVELS CURRENTLY AVAILABLE

Product class	Flow rate (gpm)
Product Class 1	0.45
Product Class 2	0.73
Product Class 3	1.13

DOE seeks comment on its new max-tech efficiency level for product class 1.

In the January 2016 Final Rule, DOE presented a theoretical linear relationship between CPSV flow rate and spray force, derived from both Bernoulli’s principle of incompressible flow and the concept of conservation of mass in a fluid system. Further, DOE had verified this linear relationship through market testing of available products and close matching between the theoretical relationship and the flow rates and spray forces of available products. 81 FR 4748, 4762. The relationship between flow rate and spray force is given below:

¹⁰ The new max-tech model utilizes smaller spray hole area to further reduce flow rate. This is not a

new technology option; rather, it is further utilizing

a technology option considered during the January 2016 Final Rule.

$$[\text{Flow Rate (gpm)}] = 0.15 * [\text{Spray Force (ozf)}]$$

Equation 1¹¹

In the June 2020 RFI, DOE requested comment regarding whether this equation was still applicable. PMI commented that this relationship was still accurate and that it supports using the equation for determining flow rate or spray force. (PMI, No. 4 at p. 5) DOE did not receive any other comments on the equation, and therefore continues to apply this equation in the engineering analysis.

2. Cost Analysis

The cost analysis portion of the engineering analysis is conducted using one or a combination of cost approaches. The selection of cost approach depends on a suite of factors, including the availability and reliability of public information, characteristics of the regulated product, and the availability and timeliness of purchasing the product on the market. The cost approaches are summarized as follows:

- *Physical teardowns:* Under this approach, DOE physically dismantles a commercially available product, component-by-component, to develop a detailed bill of materials (“BOM”) for the product.
- *Catalog teardowns:* In lieu of physically deconstructing a product, DOE identifies each component using parts diagrams (available from manufacturer websites or appliance repair websites, for example) to develop the BOM for the product.
- *Price surveys:* If neither a physical nor catalog teardown is feasible (for example, for tightly integrated products such as fluorescent lamps, which are infeasible to disassemble and for which parts diagrams are unavailable) or cost-prohibitive and otherwise impractical

(e.g., large commercial boilers), DOE conducts price surveys using publicly available pricing data published on major online retailer websites and/or by soliciting prices from distributors and other commercial channels.

In the January 2016 Final Rule, DOE developed cost-efficiency curves by creating a BOM using physical and catalog teardowns of commercial prerinse spray valves and concluded that manufacturing production cost was unaffected by efficiency level, both within product classes and across product classes. 81 FR 4748, 4765. In the June 2020 RFI, DOE requested comment as to whether this conclusion had changed since DOE’s previous analysis. 85 FR 35383, 35389. DOE did not receive any comment suggesting this conclusion has changed.

As discussed in section IV.A.2 of this document, DOE did not observe any new technology options from the January 2016 Final Rule. Therefore, for this proposed determination, DOE updated the cost analysis from the January 2016 Final Rule to be representative of the market in 2020. This included updating the material prices of each component of the previously torn down commercial prerinse spray valves and updating the labor, depreciation, utilities, maintenance, tax, and insurance costs. DOE did not include any commercial prerinse spray valves that have exited the market or had their design modified since they were torn down. The resulting BOM provides the basis for the manufacturer production cost (“MPC”) estimates.

These updated costs reaffirm that there are differences in manufacturing costs between units from different

manufacturers. However, none of the differences were directly related to the efficiency of a commercial prerinse spray valve. Rather, the differences were primarily due to differences in the type and amount of material used (e.g., plastic versus brass or stainless steel spray nozzles). As such, the resulting cost analysis provided the basis for the MPC estimates. However, DOE has initially concluded that MPC is unaffected by efficiency level, similar to the conclusion from the January 2016 Final Rule; i.e., MPC remains constant across all product classes. 81 FR 4748, 4765.

DOE seeks comment and data regarding any changes in MPC that would not be accounted for by updating the cost analysis of the previously conducted product teardowns. Specifically, DOE seeks any data that would contradict its determination of no incremental cost associated with improvements in efficiency of commercial prerinse spray valves.

a. Cost-Efficiency Results

The results of the engineering analysis are reported as cost-efficiency data and indicate that manufacturing production costs are unaffected by efficiency level within a product class and across product classes. Therefore, DOE assumed the final MPC as the average MPC of all commercial prerinse spray valves. The summary of the cost efficiency relationships for product class 1, 2, and 3 are presented in Table IV.5, Table IV.6, and Table IV.7, respectively. See TSD chapter 5 for additional detail on the engineering analysis and complete cost-efficiency results.

TABLE IV.5—COST EFFICIENCY RELATIONSHIP FOR PRODUCT CLASS 1
[Spray force ≤5.0 ozf]

Efficiency level	Efficiency level description	Flow rate (gpm)	Manufacturer production cost (2020\$)	Incremental cost over baseline (\$)
Baseline	Current Federal standard	1.00	\$26.91	\$0.00
Level 1	15% improvement over Federal standard	0.85	26.91	0.00
Level 2	25% improvement over Federal standard	0.75	26.91	0.00
Level 3	Maximum technologically-feasible (max-tech)	0.45	26.91	0.00

¹¹ See chapter 5 of the NOPD TSD.

TABLE IV.6—COST EFFICIENCY RELATIONSHIP FOR PRODUCT CLASS 2
[Spray force >5.0 ozf and ≤8.0 ozf]

Efficiency level	Efficiency level description	Flow rate (gpm)	Manufacturer production cost (2020\$)	Incremental cost over Baseline (\$)
Baseline	Current Federal standard	1.20	\$26.91	\$0.00
Level 1	15% improvement over Federal standard	1.02	26.91	0.00
Level 2	25% improvement over Federal standard	0.90	26.91	0.00
Level 3	Maximum technologically-feasible (max-tech)	0.73	26.91	0.00

TABLE IV.7—COST EFFICIENCY RELATIONSHIP FOR PRODUCT CLASS 3
[Spray force >8.0 ozf]

Efficiency level	Efficiency level description	Flow rate (gpm)	Manufacturer production cost (2020\$)	Incremental cost over baseline (\$)
Baseline	Current Federal standard	1.28	26.91	0.00
Level 1	Maximum technologically-feasible (max-tech)	1.13	26.91	0.00

See chapter 5 of the NOPD TSD for additional detail on the engineering analysis and complete cost-efficiency results.

C. Markups Analysis

To account for manufacturers’ non-production costs and profit margin, DOE applies a non-production cost multiplier (the manufacturer markup) to the MPC. The resulting manufacturer selling price (“MSP”) is the price at which the manufacturer distributes a unit into commerce. DOE developed an average manufacturer markup by examining the annual Securities and Exchange Commission (“SEC”) 10-K reports filed by publicly-traded manufacturers

primarily engaged in appliance manufacturing and whose combined product range includes commercial pre-rinse spray valves. The manufacturer mark-up is discussed in more detail in section IV.H.2.d of this document.

The markups analysis also develops appropriate markups (e.g., retailer markups, distributor markups, contractor markups) in the distribution chain and sales taxes to convert the MSP estimates derived in the engineering analysis to consumer prices, which are then used in the LCC and PBP analysis and in the manufacturer impact analysis (“MIA”). At each step in the distribution channel, companies mark

up the price of the product to cover business costs and profit margin.

DOE requested comment in the June 2020 RFI regarding markups per distribution channel as well as the portion of equipment sold via each distribution channel. 85 FR 35383, 35390. DOE did not receive any comments related to markups per distribution channel.

For commercial pre-rinse spray valves, the main parties in the distribution chain are manufacturers, distributors, retailers, and service company. Each party in the distribution chain sells to the final consumer. Table IV.8 provides the portion of equipment passing through different distribution channels.

TABLE IV.8—COMMERCIAL PRERINSE SPRAY VALVE DISTRIBUTION CHANNELS

Channel	Pathway	Percentage through channel
A	Manufacturer → Final Consumer (Direct Sales)	17
B	Manufacturer → Authorized Distributor → Final Consumer	33
C	Manufacturer → Retailer → Final Consumer	17
D	Manufacturer → Service Company → Final Consumer	33

DOE developed baseline markups for each entity in the distribution chain. Baseline markups are multipliers that convert the MSP of equipment at the baseline efficiency level to consumer purchase price. Incremental markups are multipliers that convert the incremental increase in MSP for a

product at each higher efficiency level (compared to the MSP at the baseline efficiency level) to the corresponding purchase price. In the analysis for this proposed determination, DOE used only baseline markups, as the engineering analysis indicated that there is no price increase with improvements in

efficiency for commercial pre-rinse spray valves.

DOE relied on annual reports and SEC 10-K reports from public companies in the different distribution channels to estimate average baseline markups. Table IV.9 provides the markups for each distribution channel.

TABLE IV.9—COMMERCIAL PRERINSE SPRAY VALVE BASELINE CHANNELS

Channel	Pathway	Baseline markup
A	Manufacturer → Final Consumer (Direct Sales)	1.72
B	Manufacturer → Authorized Distributor → Final Consumer	1.72

TABLE IV.9—COMMERCIAL PRERINSE SPRAY VALVE BASELINE CHANNELS—Continued

Channel	Pathway	Baseline markup
C	Manufacturer → Retailer → Final Consumer	1.52
D	Manufacturer → Service Company → Final Consumer	1.87

DOE seeks comment on the markup channels, the percentage through each channel, and the baseline markup of commercial prerinse spray valves.

Chapter 6 of the NOPD TSD provides details on DOE’s development of markups for commercial prerinse spray valves.

D. Energy and Water Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of commercial prerinse spray valves at different efficiencies in representative U.S. commercial buildings, and to assess the energy savings potential of increased CPSV efficiency. The energy use analysis estimates the range of energy use of commercial prerinse spray valves in the field (*i.e.*, as they are actually used by consumers). The energy use analysis provides the basis for other analyses DOE performed, particularly assessments of the energy savings and the savings in consumer operating costs that could result from adoption of amended or new standards. The energy use analysis for this NOPD is the same process as DOE used in the January 2016 Final Rule. 81 FR 4748, 4765–4766.

As discussed in section IV.B.1, DOE developed flow rates for each efficiency level analyzed in the engineering analysis. DOE calculated the energy and water use by determining the representative daily operating time of the product by major building types that

contain commercial kitchens found in the 2012 Commercial Building Energy Consumption Survey (“CBECS”).¹² The daily CPSV operating time was annualized based on operating schedules for each building type. In the June 2020 RFI, DOE presented CPSV annual operating hours and requested comment on those hours. 85 FR 35383, 35390. DOE did not receive any comments related to operating hours.

Water use for each equipment class was determined by multiplying the annual operating time by the flow rate and operating pressure of 60 pounds per square inch (“psi”) for each efficiency level. DOE requested comment in the June 2020 RFI requesting feedback related to the typical operating pressure of the water typically supplied to commercial prerinse spray valves and DOE’s assumption of 60 psi. 85 FR 35383, 35390. PMI concurred with this operating pressure and stated that 60 ± 2 psi is representative of the average U.S. water pressure in commercial kitchens. (PMI, No. 4 at pp. 4–5) DOE did not receive any further comments and therefore maintained the 60 psi operating pressure for each efficiency level.

Energy use was calculated by multiplying the annual water use in gallons by the energy required to heat each gallon of water to an end-use temperature of 108 °F. DOE requested comment in the June 2020 RFI related to the end-use water temperature of the

water leaving the prerinse spray valves and any related supporting data. 85 FR 35383, 35390. PMI stated that it was not aware of any data or market information that suggested a different temperature than the 108 °F end-use temperature. (PMI, No. 4 at p. 5) Cold water supply temperatures used in this calculation were derived for the nine U.S. census regions based on ambient air temperatures, and hot water supply temperature was assumed to be 140 °F based on ASHRAE Standard 12–2020.¹³

DOE seeks comment on the methods to improve DOE’s energy-use analysis, as well as any supporting alternate operating hour estimates for operation of commercial prerinse spray valves. DOE seeks comment on water pressure and the end-use temperature.

Chapter 7 of the NOPD TSD provides details on DOE’s energy use analysis for commercial prerinse spray valves.

Life-Cycle Cost and Payback Period Analysis 4764–4765. For purposes of its analysis, DOE used 2027 as the first year of compliance with any amended standards for commercial prerinse spray valves.

Table IV.10 summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations. The subsections that follow provide further discussion. Details of the spreadsheet model, and of all the inputs to the LCC and PBP analyses, are contained in chapter 8 of the NOPD TSD and its appendices.

TABLE IV.10—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS *

Inputs	Source/method
Product Cost	Derived by multiplying MPCs by manufacturer and retailer markups and sales tax, as appropriate.
Installation Costs	Baseline installation cost determined with data from U.S. Department of Labor and U.S. Bureau of Labor Statistics. Assumed no change with efficiency level.
Annual Energy Use	The energy use multiplied by the average hours per year. Average number of hours based on field data.
Energy Prices	Variability: Based on the 2012 CBECS. Electricity: Based on the U.S. Energy Information Administration (“EIA”) Form 861 data for 2020. Variability: Regional energy prices determined for 27 regions.
Energy Price Trends	Based on the <i>Annual Energy Outlook 2021</i> (“AEO2021”) price projections.
Repair and Maintenance Costs	Assumed no change with efficiency level.
Product Lifetime	Average: 5 years

¹² U.S. Department of Energy—Energy Information Administration. *Commercial Building Energy Consumption Survey*. 2020. Washington, DC.

Available at <https://www.eia.gov/consumption/commercial/data/2012/>.

¹³ ASHRAE Standard 12–2020: *Minimizing the Risk of Legionellosis Associated with Building Water Systems* (March 2020).

TABLE IV.10—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS *—Continued

Inputs	Source/method
Discount Rates	Approach involves identifying all possible debt or asset classes that might be used to purchase the considered appliances or might be affected indirectly. Primary data source was the Federal Reserve Board's Survey of Consumer Finances. 2027.
Compliance Date	

* References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the NOPD TSD.

1. Product Cost

To calculate consumer product costs, DOE multiplied the MSPs developed in the engineering analysis by the distribution channel markups described in section IV.C (along with sales taxes). As stated earlier in this notice, DOE used baseline markups, but did not apply incremental markups, because the engineering analysis indicated that there is no price increase with improvements in efficiency for commercial prerinse spray valves.

In prior energy conservation standards rulemakings, DOE estimated the total installed costs per unit for product and then assumed that costs remain constant throughout the analysis period. This assumption is conservative because product costs tend to decrease over time. In 2011, DOE published a notice of data availability (“NODA”) titled *Equipment Process Forecasting in Energy Conservation Standards Analysis*. 76 FR 9696 (Feb. 22, 2011). In the NODA, DOE proposed a methodology for determining whether equipment process have trended downward in real terms. The methodology examines so-called price or experimental learning, wherein, with ever-increasing experience with the production of a product, manufacturers are able to reduce their production costs through innovations in technology and process.

Commercial prerinse spray valves are formed metal devices. Neither changes in technology nor process are expected to occur to change the price of the product in this analysis. For this analysis DOE assumed that product costs remain constant over the analysis period. This is consistent with the January 2016 Final Rule. 81 FR 4748, 4767.

2. Installation Cost

Installation cost includes labor, overhead, and any miscellaneous materials and parts needed to install the product. DOE used data from U.S. Department of Labor to estimate the baseline installation cost for commercial prerinse spray valves. Consistent with the January 2016 Final Rule, DOE found no evidence that installation costs

would be affected by increased efficiency levels. 81 FR 4748, 4767.

3. Annual Energy Consumption

For each sampled CPSV user, DOE determined the energy consumption for a commercial prerinse spray valve at different efficiency levels using the approach described previously in section IV.D of this document.

4. Energy Prices

DOE derived average annual commercial electricity prices for 27 geographic regions using data from the U.S. Energy Information Administration (“EIA”) Form EIA-861 database (based on “Annual Electric Power Industry Report”).¹⁴ The NOPD analysis used the data for 2020 DOE derived average natural gas prices using data from EIA’s natural gas prices.¹⁵

To estimate energy prices in future years, DOE multiplied the average regional energy prices by a projection of annual change in national-average commercial energy price in *AEO2021*.¹⁶ *AEO2021* has an end year of 2050. To estimate price trends after 2050, DOE used the average annual rate of change in prices from 2040 through 2050.

5. Water and Wastewater Prices

DOE obtained data on water and wastewater prices from the 2019 American Water Works Association (“AWWA”) surveys for this analysis.¹⁷ For each state and the District of Columbia, DOE combined all individual utility observations within the state to develop one value for water and wastewater service. Because water and wastewater charges are frequently tied to the same metered commodity values, DOE combined the prices for water and wastewater into one total dollar per

thousand gallons figure. This figure is referred to as the combined water price. DOE used the consumer price index (“CPI”) data for water related consumption (1974–2019) in developing a real growth rate for combined water price forecasts. DOE requested comment in the June 2020 RFI whether a different water price dataset should be considered. 85 FR 35383, 35391. DOE received no comments related to water price datasets. Chapter 8 of the NOPD TSD provides more detail about DOE’s approach to developing water and wastewater prices.

6. Maintenance and Repair Costs

Repair costs are associated with repairing or replacing product components that have failed in an appliance; maintenance costs are associated with maintaining the operation of the product. Typically, small incremental increases in product efficiency produce no, or only minor, changes in repair and maintenance costs compared to baseline efficiency products. DOE requested comment in the June 2020 RFI on the assumption of zero maintenance and repair costs upon failure. DOE assumed that consumers would replace the commercial prerinse spray valve upon failure rather than repairing the product. 85 FR 35383, 35391. DOE also requested comment if these changes would differ per efficiency level. *Id.* DOE received no comments related to maintenance nor repair costs. For this NOPD, DOE modeled commercial prerinse spray valves as not being repaired, and no maintenance costs. Additionally, DOE modeled no changes in maintenance or repair costs between different efficiency levels.

7. Product Lifetime

For commercial prerinse spray valves, DOE used lifetime estimates from manufacturer datasheets and other published data sources. DOE requested comment in the June 2020 RFI regarding lifetime and lifetime distributions. In the June 2020 RFI, DOE restated the values from the January 2016 Final Rule, an average lifetime of 5 years and maximum of 10 years. 85 FR 35383, 35391. DOE did not receive any

¹⁴ Available at www.eia.doe.gov/cneaf/electricity/page/eia861.html.

¹⁵ Available at https://www.eia.gov/dnav/ng/ng_pri_sum_a_EPGO_PCS_DMcf_m.htm.

¹⁶ U.S. Department of Energy—Energy Information Administration. *Annual Energy Outlook 2021 with Projections to 2050*. 2021. Washington, DC. (AEO2021). Available at www.eia.gov/outlooks/aeo/.

¹⁷ Available at <https://www.awwa.org/Store/2019-Water-and-Wastewater-Rate-Survey-Digital-Set/ProductDetail/79004009>.

comments related to lifetime of commercial prerinse spray valves. DOE developed a Weibull distribution with an average lifetime of 5 years and a maximum lifetime of 10 years. The use of a lifetime distribution for this analysis helps account for the variability in product lifetimes.

8. Discount Rates

In the calculation of LCC, DOE applies discount rates appropriate to CPSV users to estimate the present value of future operating costs. DOE estimated a distribution of commercial discount rates for commercial prerinse spray valves based on consumer financing costs and the opportunity cost of consumer funds.

DOE applies weighted average discount rates calculated from consumer debt and asset data, rather than marginal or implicit discount rates.¹⁸ DOE notes that the LCC does not analyze the appliance purchase decision, so the implicit discount rate is not relevant in this model. The LCC estimates NPV over the lifetime of the product, so the appropriate discount rate will reflect the general opportunity cost of commercial consumer funds, taking this time scale into account. Given the long-time horizon modeled in the LCC, the application of a marginal interest rate associated with an initial source of funds is inaccurate. Regardless of the method of purchase, consumers are expected to continue to rebalance their debt and asset holdings over the LCC analysis period, based on the

restrictions consumers face in their debt payment requirements and the relative size of the interest rates available on debts and assets. DOE estimates the aggregate impact of this rebalancing using the historical distribution of debts and assets.

To establish commercial discount rates for the LCC analysis, DOE identified all relevant commercial consumer debt or asset classes in order to approximate a commercial consumer's opportunity cost of funds related to appliance energy cost savings. It estimated the average percentage shares of the various types of debt and equity by commercial consumer building type using data from Damodaran Online¹⁹ for 1998–2019. Using Damodaran Online and the Federal Reserve, DOE developed a distribution of rates for each type of debt and asset by building type to represent the rates that may apply in the year in which amended standards would take effect. DOE assigned each sample building a specific discount rate drawn from one of the distributions. The average rate across all types of commercial consumer debt and equity, weighted by the shares of each type, given business size, is 7.0 percent. See chapter 8 of the NOPD TSD for further details on the development of consumer discount rates.

9. Energy Efficiency Distribution in the No-New-Standards Case

To accurately estimate the share of consumers that would be affected by a

potential energy conservation standard at a particular efficiency level, DOE's LCC analysis considered the projected distribution (market shares) of product efficiencies under the no-new-standards case (*i.e.*, the case without amended or new energy conservation standards).

To estimate the energy efficiency distribution of commercial prerinse spray valves for 2027 (the first year of the analysis period), DOE conducted general internet searches and examined manufacturer literature to understand the characteristics of the spray valves currently offered on the market. DOE assumed that the no-new-standards case percentages in 2027 would stay the same through the analysis period. The estimated market shares by product class for the no-new-standards case for commercial prerinse spray valves are shown in Table IV.11. The estimated market shares within each product class for the no-new-standards case for commercial prerinse spray valves are shown in Table IV.12. See chapter 8 of the NOPD TSD for further information on the derivation of the efficiency distributions.

TABLE IV.11—PRODUCT CLASS DISTRIBUTION IN NO-NEW-STANDARDS CASE

Product class	Portion of shipments (% of shipments)
1	10
2	70
3	20

TABLE IV.12—EFFICIENCY LEVEL DISTRIBUTION WITHIN EACH PRODUCT CLASS IN NO-NEW-STANDARDS CASE

Efficiency level	Product class 1 (% of shipments)	Product class 2 (% of shipments)	Product class 3 (% of shipments)
0	3.1	74.2	86.0
1	—	24.2	14.0
2	87.5	.....	.....
3	9.4	1.5	.....

10. Payback Period Analysis

The PBP is the amount of time it takes the consumer to recover the additional installed cost of more-efficient products, compared to baseline products, through energy cost savings. The PBP is expressed in years. The PBP that exceeds the life of the product means that the increased total installed cost is

not recovered in reduced operating expenses.

The inputs to the PBP calculation for each efficiency level are the change in total installed cost of the product and the change in the first-year annual operating expenditures relative to the baseline. The PBP calculation uses the same inputs as the LCC analysis, except that discount rates are not needed.

E. Shipments Analysis

DOE uses projections of annual product shipments to calculate the national impacts of potential amended or new energy conservation standards on energy use, NPV, and future manufacturer cash flows.²⁰ The shipments model takes an accounting approach in tracking market shares of each product class and the vintage of

¹⁸The implicit discount rate is inferred from a consumer purchase decision between two otherwise identical goods with different first cost and operating cost. It is the interest rate that equates the increment of first cost to the difference in NPV of lifetime operating cost, incorporating the influence of several factors: transaction costs, risk premiums

and response to uncertainty, time preferences, and interest rates at which a consumer is able to borrow or lend.

¹⁹Damodaran Online. Available at <http://pages.stern.nyu.edu/~adamodar/> (accessed April 2020).

²⁰DOE uses data on manufacturer shipments as a proxy for national sales, as aggregate data on sales are lacking. In general, one would expect a close correspondence between shipments and sales.

units in the stock. Stock accounting uses product shipments as inputs to estimate the age distribution of in-service product stocks for all years. The age distribution of in-service product stocks is a key input to calculations of both the NES and NPV, because operating costs for any year depend on the number of commercial prerinse spray valves in operation during that year.

Historical CPSV shipment data come from industry reports as well as DOE’s Compliance Certification Management System.²¹ DOE used the commercial floorspace growth rate to make projections through year 2056. PMI commented that at least 20,000 restaurants closed in 2020 as a result of the COVID-19 pandemic. (PMI, No. 4 at pp. 3–4) DOE modeled flat growth in 2020 through 2022 for commercial prerinse spray valves. DOE assumes that growth will increase by the time the analysis period starts in 2027.

Previous research by the Environmental Protection Agency (“EPA”) identified low spray force as one of the primary drivers of user dissatisfaction for some application of commercial prerinse spray valves.²² The relationship between consumer satisfaction and spray force for commercial prerinse spray valves makes it possible that consumers may opt to switch product classes if they are unsatisfied with the spray force

available to them in their current product class. In some cases, consumers may opt to switch to a commercial prerinse spray valve that consumes more water and energy than their current product.

If the current choices of product under the current regulations correspond to the consumers’ optimal product, it is probable that some consumers would switch from product class 1 to product class 2 or from product class 2 to product class 3 in response to amended standards in order to maintain their satisfaction with the product. In more extreme cases, consumers may also opt to exit the CPSV market and purchase a different type of product (e.g., a faucet) with a higher flow rate. The economics resulting from product-class and product-type switching may result in lower optimal efficiency levels and reduced estimates of water and energy savings, as compared to the case without class switching.

In the January 2016 Final Rule, DOE acknowledged both the possibility that consumers would switch between product classes and the possibility that a subset of consumers would exit the CPSV market and purchase higher flow-rate products (e.g., faucets). 81 FR 4748, 4769. DOE previously implemented a nearest neighbor switching mechanism and a product switch scenario in the

shipments model to estimate such consumer choices.

In the June 2020 RFI, DOE requested comment and information on whether product class switching occurred as a result of the previous amended rule as well as any potential switching as the result of a new amended rule. 85 FR 35883, 35392. NEEA recommended DOE examine potential product-class switching in the product class 3 CPSV market. (NEEA, No. 7 at pp. 1–2) In the shipment model in this analysis, DOE developed a method for modeling product class switching where consumers opted for the nearest neighbor and the possibility of some consumers exiting the CPSV market for higher flow-rate products, similar to the previous rulemaking.

1. Nearest Neighbor Switch Scenario

The first scenario can be characterized as a “nearest neighbor” approach, in that consumers would choose the product with the flow rate that is closest to their current product flow rate, even if it has a higher spray force (thus product class switching). Under the nearest neighbor scenario, DOE assumed 100 percent of consumers would choose the closest flow rate. Table IV.13 lists the flow rate for the potential efficiency levels evaluated in this NOPD, which are the consumer’s potential options for product switching.

TABLE IV.13—COMMERCIAL PRERINSE SPRAY VALVE FLOW RATES

Efficiency level	Product class 1	Product class 2	Product class 3
	Flow rate (gpm)	Flow rate (gpm)	Flow rate (gpm)
Baseline	1.00	1.20	1.28
Level 1	* 0.85	1.02	1.13
Level 2	0.75	* 0.90	.....
Level 3	0.45	0.73	.....

* Market data do not indicate currently available product that meet this efficiency level.

This scenario was included within the Reference case when DOE analyzed any potential amended standards, similar to the January 2016 Final Rule. 81 FR 4748, 4769. A detailed discussion of DOE’s method to model product class switching is contained in chapter 9 of the TSD.

DOE seeks comment on the product-class switching methodology used in this analysis, including any logic consumers may employ when switching as well as the portion of consumers that may switch.

2. Product Switch Scenario

In the January 2016 Final Rule, DOE include an alternate analysis (Trial Standard Level 4a) where consumers of product class 3 might opt for other products such as a faucet. 81 FR 4748, 4779. The Federal standard for that product has a flow rate of 2.2 gpm. 10 CFR 430.32(o)

In response to the June 2020 RFI, NEEA requested DOE examine potential switching to products above DOE standards. (NEEA, No. 7 at pp. 1–3)

In this NOPD, DOE also included a sensitivity analysis (known as a product switch scenario) in which some consumers exit the CPSV market and instead use other products like faucets, with greater flow rates than applicable to commercial prerinse spray valves. In this sensitivity analysis, a subset of consumers currently using the highest efficiency level of product class 3 (e.g., consumers currently purchasing valves at ELO of product class 3) would exit the CPSV market and instead use faucets with a flow rate of 2.2 gpm.

²¹ Available at <https://www.regulations.doe.gov/ccms>.

²² EPA WaterSense, *Prerinse Spray Valves Field Study Report*, as 24–25 (Mar. 31, 2011) (Available at <https://www.epa.gov/sites/production/files/2017-02/documents/ws-background-prsv-field-study-report.pdf>).

As noted in section IV.A.5, since the January 2016 Final Rule, some of the high flow rates (and correspondingly high spray force) units identified during the last rulemaking have been redesigned as product class 2 commercial prerinse spray valves, with lower spray forces. As a result, few units are currently available in product class 3. The lack of units available in product class 3 makes it more likely that customers seeking the product utility associated with a high spray force unit would not be satisfied with their commercial prerinse spray valve if more efficient standards are considered in product class 3. Therefore, the likelihood of customers opting for alternative products in response to amended standards is more likely during this rulemaking than it was during the January 2016 Final Rule.

A detailed discussion of DOE’s method to model this sensitivity analysis is contained in chapter 9 of the TSD.

DOE seeks comment on the approach used to analyze the possibility of some consumers exiting the CPSV market for higher flow-rate products, including any logic consumers may employ when

switching as well as the portion of consumers that may switch.

F. National Impact Analysis

The NIA assesses the NES and the NPV from a national perspective of total consumer costs and savings that would be expected to result from new or amended standards at specific efficiency levels.²³ (“Consumer” in this context refers to consumers of the equipment being regulated.) DOE calculates the NES and NPV for the potential standard levels considered based on projections of annual product shipments, along with the annual energy consumption and total installed cost data from the energy use and LCC analyses. For the present analysis, DOE projected the energy savings, operating cost savings, product costs, and NPV of consumer benefits over the lifetime of commercial prerinse spray valves sold from 2027 through 2056.

DOE evaluates the effects of new or amended standards by comparing a case without such standards with standards-case projections. The no-new-standards case characterizes energy use and consumer costs for each CPSV product class in the absence of new or amended

energy conservation standards. For this projection, DOE considers historical trends in efficiency and various forces that are likely to affect the mix of efficiencies over time. DOE compares the no-new-standards case with projections characterizing the market for each CPSV product class if DOE adopted new or amended standards at specific energy efficiency levels (*i.e.*, the ELs or standards cases) for that class. For the standards cases, DOE considers how a given standard would likely affect the market shares of commercial prerinse spray valves with lower flow rates than the standard.

DOE uses a spreadsheet model to calculate the energy savings and the national consumer costs and savings from each EL. Interested parties can review DOE’s analyses by changing various input quantities within the spreadsheet. The NIA spreadsheet model uses typical values (as opposed to probability distributions) as inputs.

Table IV.14 summarizes the inputs and methods DOE used for the NIA analysis for the NOPD. Discussion of these inputs and methods follows the table. See chapter 10 of the NOPD TSD for details.

TABLE IV.14—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS

Inputs	Method
Shipments	Annual shipments from shipments model.
Modeled Compliance Date of Standard	2027.
Efficiency Trends	No-new-standards case. Standards cases.
Annual Energy Consumption per Unit	Annual weighted-average values are a function of energy use at each EL.
Total Installed Cost per Unit	Annual weighted-average values are a function of cost at each EL.
Annual Energy Cost per Unit	Annual weighted-average values as a function of the annual energy consumption per unit and energy prices.
Repair and Maintenance Cost per Unit	Annual values do not change with efficiency level.
Energy Prices	<i>AEO2021</i> projections (to 2050) and extrapolation through 2056.
Energy Site-to-Primary and FFC Conversion	A time-series conversion factor based on <i>AEO2021</i> .
Discount Rate	3 percent and 7 percent.
Present Year	2021.

1. Product Efficiency Trends

A key component of the NIA is the trend in energy efficiency projected for the no-new-standards case and each of the standards cases. Section IV.E.9 of this document describes how DOE developed an energy efficiency distribution for the no-new-standards case (which yields a shipment-weighted average efficiency) for each of the considered product classes for the year of anticipated compliance with an amended or new standard.

For the standards cases, DOE used a “roll-up” switching scenario to establish

the shipment-weighted efficiency for the year that standards are assumed to become effective (2027). In this scenario, the market shares of product in the no-new-standards case that do not meet the standard under consideration would “roll up” to meet the new standard level or switch to the “nearest neighbor” based on the flow rate of the valves that were originally used. The market share of product above the standard would remain unchanged.

2. National Energy Savings

The NES analysis involves a comparison of national energy

consumption of the considered product between each potential standards case (EL) and the case with no new or amended energy conservation standards. DOE calculated the national energy consumption by multiplying the number of units (stock) of each product (by vintage or age) by the unit energy consumption (also by vintage). DOE calculated annual NES based on the difference in national energy consumption for the no-new-standards case and for each higher efficiency standard case. DOE estimated energy consumption and savings based on site energy and converted the electricity

²³ The NIA accounts for impacts in the 50 states and Washington, DC.

consumption and savings to primary energy (*i.e.*, the energy consumed by power plants to generate site electricity) using annual conversion factors derived from *AEO2021*. Cumulative energy savings are the sum of the NES for each year over the timeframe of the analysis.

The use of a higher-efficiency product is occasionally associated with a direct rebound effect, which refers to an increase in utilization of the product due to the increase in efficiency. For commercial prerinse spray valves, DOE did not use a rebound effect estimate. DOE does not include the rebound effect in the NPV analysis because it reasons that the increased service from greater use of the product has an economic value that is reflected in the value of the foregone energy savings.

In 2011, in response to the recommendations of a committee on “Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards” appointed by the National Academy of Sciences, DOE announced its intention to use FFC measures of energy use and greenhouse gas and other emissions in the NIA and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281 (Aug. 18, 2011). After evaluating the approaches discussed in the August 18, 2011 notice, DOE published a statement of amended policy in which DOE explained its determination that EIA’s National Energy Modeling System (“NEMS”) is the most appropriate tool for its FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (Aug. 17, 2012). NEMS is a public domain, multi-sector, partial equilibrium model of the U.S. energy sector²⁴ that EIA uses to prepare its AEO. The FFC factors incorporate losses in production, and delivery in the case of natural gas, (including fugitive emissions) and additional energy used to produce and deliver the various fuels used by power plants. The approach used for deriving FFC measures of energy use and emissions is described in appendix 10B of the NOPD TSD.

3. Net Present Value Analysis

The inputs for determining the NPV of the total costs and benefits experienced by consumers are (1) total annual installed cost, (2) total annual operating costs (energy costs and repair and maintenance costs), and (3) a discount factor to calculate the present value of costs and savings. DOE

calculates net savings each year as the difference between the no-new-standards case and each standards case in terms of total savings in operating costs versus total increases in installed costs. DOE calculates operating cost savings over the lifetime of each product shipped during the projection period.

The operating cost savings are energy cost savings, which are calculated using the estimated energy savings in each year and the projected price of the appropriate form of energy. To estimate energy prices in future years, DOE multiplied the average regional energy prices by the projection of annual national-average commercial energy price changes in the Reference case from *AEO2021*, which has an end year of 2050. To estimate price trends after 2050, DOE used the average annual rate of change in prices from 2020 through 2050. As part of the NIA, DOE also analyzed scenarios that used inputs from variants of the *AEO2021* Reference case that have lower and higher economic growth. Those cases have lower and higher energy price trends compared to the Reference case. NIA results based on these cases are presented in appendix 10C of the NOPD TSD.

In calculating the NPV, DOE multiplies the net savings in future years by a discount factor to determine their present value. For this NOPD, DOE estimated the NPV of consumer benefits using both a 3-percent and a 7-percent real discount rate. DOE uses these discount rates in accordance with guidance provided by the Office of Management and Budget (“OMB”) to Federal agencies on the development of regulatory analysis.²⁵ The discount rates for the determination of NPV are in contrast to the discount rates used in the LCC analysis, which are designed to reflect a consumer’s perspective. The 7-percent real value is an estimate of the average before-tax rate of return to private capital in the U.S. economy. The 3-percent real value represents the “social rate of time preference,” which is the rate at which society discounts future consumption flows to their present value.

G. Manufacturer Impact Analysis

1. Overview

DOE conducted a MIA for commercial prerinse spray valves to estimate the financial impacts of analyzed amended energy conservation standards on

manufacturers of commercial prerinse spray valves. The MIA has both quantitative and qualitative aspects. The quantitative part of the MIA relies on the Government Regulatory Impact Model (“GRIM”), an industry cash-flow model customized for the commercial prerinse spray valves covered in this proposed determination. The key GRIM inputs are data on the industry cost structure, MPCs, and shipments, as well as assumptions about manufacturer markups and manufacturer conversion costs. The key MIA output is industry net present value (“INPV”), which is the sum of industry annual cash flows over the analysis period, discounted using the industry-weighted average cost of capital, and the impact to domestic manufacturing employment. The GRIM calculates annual cash flows using standard accounting principles. DOE used the GRIM to compare changes in INPV between the no-new-standards case and various ELs, the standards cases. The difference in INPV between the no-new-standards case and the standards cases represents the financial impact of potential amended energy conservation standards on CPSV manufacturers. Different sets of assumptions (conversion cost scenarios) produce different INPV results. The qualitative part of the MIA addresses factors such as manufacturing capacity; characteristics of, and impacts on, any particular subgroup of manufacturers, including small manufacturers; the cumulative regulatory burden placed on CPSV manufacturers; and any impacts on competition.

2. GRIM Analysis and Key Inputs

DOE uses the GRIM to quantify the changes in cash flows over time due to potential amended energy conservation standards. These changes in cash flows result in either a higher or lower INPV for the standards cases compared to the no-new-standards case. The GRIM uses a standard annual cash-flow analysis that incorporates MPCs, manufacturer markups, shipments, and industry financial information as inputs. It then models changes in manufacturer investments that may result from the analyzed amended energy conservation standards. The GRIM uses these inputs to calculate a series of annual cash flows beginning with the reference year of the analysis, 2021, and continuing to the terminal year of the analysis, 2056. DOE computes INPV by summing the stream of annual discounted cash flows during the analysis period. DOE used a real discount rate of 6.89 percent, the same discount rate used in the January 2016 Final Rule, for CPSV manufacturers in this NOPD. 81 FR 4748, 4749. Many of

²⁴ For more information on NEMS, refer to *The National Energy Modeling System: An Overview 2009*, DOE/EIA-0581(2009), October 2009. Available at [https://www.eia.gov/analysis/pdfpages/0581\(2009\)index.php](https://www.eia.gov/analysis/pdfpages/0581(2009)index.php).

²⁵ United States Office of Management and Budget. *Circular A-4: Regulatory Analysis*. September 17, 2003. Section E. Available at www.whitehouse.gov/omb/memoranda/m03-21.html.

the GRIM inputs come from the engineering analysis, the shipments analysis, and other research conducted during the MIA. The major GRIM inputs are described in detail in the following sections.

DOE seeks comment on the use of 6.89 as a real discount rate for CPSV manufacturers.

a. Manufacturer Product Costs

Manufacturing more efficient products is typically more expensive than manufacturing baseline products. However, as discussed in section IV.B.2 of this document, the MPCs for all commercial prerinse spray valves is constant at every efficiency level and for every product class. In the MIA, DOE used the MPCs calculated in the engineering analysis, as described in section IV.B.2 of this document and further detailed in chapter 5 of the TSD for this NOPD.

b. Shipment Projections

INPV, the key GRIM output, depends on industry revenue, which depends on the quantity and prices of commercial prerinse spray valves shipped in each year of the analysis period. Industry revenue calculations require forecasts of (1) total annual shipment volume of commercial prerinse spray valves, (2) the distribution of shipments across the product classes, and (3) the distribution of shipments across ELs.

In the MIA, DOE used the shipments calculated as part of the shipments analysis discussion in section IV.F of this document and chapter 9 of the TSD for this NOPD.

c. Product and Capital Conversion Costs

DOE expects the analyzed amended CPSV energy conservation standards would cause manufacturers to incur conversion costs to bring their production facilities and product designs into compliance with potential amended standards. For the MIA, DOE classified these conversion costs into two groups: (1) Capital conversion costs and (2) product conversion costs. Capital conversion costs are investments in property, plant, and equipment necessary to adapt or change existing production facilities so new product designs can be fabricated and assembled. Product conversion costs are investments in research, development, testing, marketing, certification, and other non-capitalized costs necessary to make product designs comply with potential amended standards.

In general, DOE assumes all conversion-related investments occur between the year of publication of a potential final rule and the year by

which manufacturers must comply with potential amended standards. DOE created estimates of industry capital and product conversion costs using the engineering cost model and information gained during product teardowns. Product conversion costs depend on the number of CPSV models that need to be redesigned and re-tested as well as the number of manufacturers that need to update brochures and marketing materials. Capital conversion costs are based on the number of plastic spray patterns that would need to be fabricated by CPSV manufacturers. The conversion cost estimates are presented in section V.B of this document.

d. Manufacturer Markup

As discussed in section IV.H.2.a of this document, the MPCs for commercial prerinse spray valves are the manufacturers' costs for those products. The MPCs include materials, direct labor, depreciation, and overhead, which are collectively referred to as the cost of goods sold. The MSP is the price received by CPSV manufacturers from the first sale of those products, typically to a distributor, regardless of the downstream distribution channel through which the commercial prerinse spray valves are ultimately sold. The MSP is not the price the end-user pays for commercial prerinse spray valves because there are typically multiple sales along the distribution chain and various markups applied to each sale. The MSP equals the MPC multiplied by the manufacturer markup. The manufacturer markup covers all the CPSV manufacturer's non-production costs (i.e., selling, general, and administrative expenses; research and development; and interest) as well as profit. Total industry revenue for CPSV manufacturers equals the MSPs at each efficiency level multiplied by the number of shipments at that efficiency level for all product classes. As previously discussed in section IV.B.2 of this document, the MPC for all commercial prerinse spray valves is the same at each ELs for all product classes. Therefore, total industry revenue equals the MSP multiplied by the number of shipments.

In the June 2020 RFI, DOE requested comment on whether the manufacturer markup of 1.30 from the January 2016 Final Rule is still appropriate to represent the market share weighted average value. 85 FR 35383, 35389. DOE did not receive any comments on this topic. Therefore, in this NOPD MIA, DOE used the same manufacturer markup of 1.30 that was used in the January 2016 Final Rule.

V. Analytical Results and Conclusions

The following section addresses the results from DOE's analyses with respect to the considered energy conservation standards for commercial prerinse spray valves. It addresses the ELs examined by DOE and the projected impacts of each of these levels. Additional details regarding DOE's analyses are contained in the NOPD TSD supporting this document.

A. Economic Impacts on Individual Consumers

DOE analyzed the cost effectiveness (i.e., the savings in operating costs throughout the estimated average life of commercial prerinse spray valves compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the commercial prerinse spray valves) that is likely to result from the imposition of a standard at an efficiency level by considering the LCC and PBP at each EL. DOE also examined the impacts of potential standards on selected consumer subgroups. These analyses are discussed in the following sections.

Typically, a higher-efficiency product can affect consumers in two ways: (1) Purchase price increases and (2) annual operating costs decrease. In the case of commercial prerinse spray valves, there is no incremental cost associated with the higher-efficiency product. Inputs used for calculating the LCC and PBP include total installed costs (i.e., product price plus installation costs) and operating costs (i.e., annual energy use, energy prices, energy price trends, repair costs, and maintenance costs). The LCC calculation also uses product lifetime and a discount rate. Chapter 8 of the NOPD TSD provides detailed information on the LCC and PBP analyses.

Table V.1 shows the average LCC and PBP results for the ELs considered for commercial prerinse spray valves in this analysis.

TABLE V.1—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL

Efficiency level	LCC savings 2020\$	Simple payback period years
EL 1	\$379.05	0
EL 2	739.23	0
EL 3	751.50	0

The average LCC results in Table V.1 reflect the assumption of a consumer opting to stay within the same product class and not incorporating the switching between product classes that is modeled when assessing national impacts. The results in Table V.1 also

assume a consumer purchases a product from an efficiency level that exists in the market as shown in Table IV.13. As a result, product class 1 consumers at baseline efficiency level purchase efficiency level 2 products in the LCC analysis, and product class 2 consumers at efficiency level 1 purchase efficiency level 3 in the LCC analysis.

B. Economic Impacts on Manufacturers

DOE performed a MIA to estimate the impact of potential amended energy conservation standards on manufacturers of commercial prerinse spray valves. The following sections describe the expected impacts on CPSV manufacturers at each EL. Chapter 11 of the NOPD TSD explains the MIA in further detail.

1. Industry Cash Flow Analysis Results

In this section, DOE provides MIA results from the analysis, which examines changes in the industry that could result from new and amended standards. Table V.2 and Table V.3 depict the estimated financial impacts (represented by changes in INPV) of potential amended energy conservation standards on CPSV manufacturers, as well as the conversion costs that DOE estimates manufacturers would incur at each EL. To evaluate the range of cash flow impacts on the CPSV industry, DOE modeled two conversion cost scenarios that correspond to the range of potential manufacturer investments that

may occur in responses to potential amended standards. Each conversion cost scenario results in a unique set of cash flows and corresponding industry values at each EL.

In the following discussion, the INPV results refer to the difference in industry value between the no-new-standards case and the standards cases that result from the sum of discounted cash flows from the reference year (2021) through the end of the analysis period (2056). The results also discuss the difference in cash flows between the no-new-standards case and the standards cases in the year before the analyzed compliance date for potential amended energy conservation standards. This differential represents the size of the required conversion costs relative to the cash flow generated by the CPSV industry in the absence of amended energy conservation standards.

To assess the upper (less severe) end of the range of potential impacts on CPSV manufacturers, DOE modeled a sourced conversion cost scenario. This scenario assumes that the majority of CPSV manufacturers, but not all CPSV manufacturers, source components (including the nozzle) from component suppliers and simply assemble the commercial prerinse spray valves. In this scenario, the CPSV manufacturers that DOE assumed source components would not incur capital conversion cost related to the fabrication of plastic

nozzles if CPSV manufacturers must redesign nozzle molds due to the analyzed energy conservation standards.

To assess the lower (more severe) end of the range of potential impacts on CPSV manufacturers, DOE modeled a fabricated conversion cost scenario. This scenario assumes that all of the CPSV manufacturers currently selling products with plastic spray nozzles fabricate these nozzles in-house. In this scenario, all CPSV manufacturers incur capital conversion costs related to the fabrication of plastic nozzles if CPSV manufacturers must redesign nozzle molds due to analyzed energy conservation standards.

DOE seeks comment on the methodology for estimating manufacturer conversion costs used in the two conversion cost scenarios (the sourced conversion cost scenario and the fabricated conversion cost scenario). Additionally, DOE seeks comment of how many manufacturers fabricate plastic nozzles in-house versus how many manufacturers out-source the production of the plastic nozzles for their commercial prerinse spray valves.

Table V.2 and Table V.3 present the projected results for commercial prerinse spray valves under the sourced and fabricated conversion cost scenarios. DOE examined results for all product classes together since most manufacturers sell products across a variety of the analyzed product classes.

TABLE V.2—MANUFACTURER IMPACT ANALYSIS FOR COMMERCIAL PRERINSE SPRAY VALVES—SOURCED CONVERSION COST SCENARIO

	Units	No-new-standards case	Efficiency level *		
			1	2	3
INPV	(2020\$ millions)	11.5	10.6	10.6	10.6
Change in INPV	(2020\$ millions)		(0.9)	(0.9)	(0.9)
	(%)		(7.5)	(7.5)	(7.6)
Product Conversion Costs	(2020\$ millions)		1.3	1.3	1.3
Capital Conversion Costs	(2020\$ millions)		0.1	0.1	0.1
Total Conversion Costs	(2020\$ millions)		1.4	1.4	1.4

* Numbers in parentheses indicate negative numbers.

TABLE V.3—MANUFACTURER IMPACT ANALYSIS FOR COMMERCIAL PRERINSE SPRAY VALVES—FABRICATED CONVERSION COST SCENARIO

	Units	No-new-standards case	Efficiency level *		
			1	2	3
INPV	(2020\$ millions)	11.5	10.5	10.5	10.4
Change in INPV	(2020\$ millions)		(1.0)	(1.0)	(1.1)
	(%)		(8.5)	(8.5)	(9.5)
Product Conversion Costs	(2020\$ millions)		1.3	1.3	1.3
Capital Conversion Costs	(2020\$ millions)		0.3	0.3	0.4
Total Conversion Costs	(2020\$ millions)		1.6	1.6	1.7

* Numbers in parentheses indicate negative numbers.

At EL 1, DOE estimates the impacts on INPV to range from $-\$1.0$ million to $-\$0.9$ million, or a change in INPV of -8.5 percent to -7.5 percent. At EL 1, industry free cash flow (operating cash flow minus capital expenditures) is estimated to decrease to $\$0.1$ million, or a drop of up to 88.2 percent, compared to the no-new-standards case value of $\$0.7$ million in 2026, the year leading up to the analyzed compliance date of potential amended energy conservation standards.

Percentage impacts on INPV are moderately negative at EL 1. DOE projects that in the analyzed year of compliance (2027), 97 percent of CPSV shipments in product class 1, 26 percent of CPSV shipments in product class 2, and 14 percent of CPSV shipments in product class 3 will meet EL 1. DOE expects CPSV manufacturers to incur approximately $\$1.3$ million in product conversion costs to update brochures and marketing material and re-test and redesigned CPSV models that would need to be redesigned if standards were set at EL 1. Additionally, CPSV manufacturers would incur between $\$0.3$ million and $\$0.1$ million in capital conversion costs to fabricate new plastic nozzle molds to accommodate spray patterns that could meet potential standards set at EL 1.

At EL 2, DOE estimates the impacts on INPV to range from $-\$1.0$ million to $-\$0.9$ million, or a change in INPV of -8.5 percent to -7.5 percent. At EL 2, industry free cash flow (operating cash flow minus capital expenditures) is estimated to decrease to $\$0.1$ million, or a drop of up to 88.2 percent, compared to the no-new-standards case value of $\$0.7$ million in 2026, the year leading up to the analyzed compliance date of potential amended energy conservation standards.

Percentage impacts on INPV are moderately negative at EL 2. DOE projects that in the analyzed year of compliance (2027), 97 percent of CPSV shipments in product class 1 and 2 percent of CPSV shipments in product class 2 will meet or exceed EL 2. Product class 3 is already at max-tech, and 14 percent of product class 3 CPSV shipments will meet max-tech. DOE expects CPSV manufacturers to incur approximately $\$1.3$ million in product conversion costs to update brochures and marketing material and re-test and redesigned CPSV models that would need to be redesigned if standards were set at EL 2. Additionally, CPSV manufacturers would incur between $\$0.3$ million and $\$0.1$ million in capital conversion costs to fabricate new plastic nozzle molds to accommodate spray

patterns that could meet potential standards set at EL 2.

At EL 3, max-tech for all product classes, DOE estimates the impacts on INPV to range from $-\$1.1$ million to $-\$0.9$ million, or a change in INPV of -9.5 percent to -7.6 percent. At EL 3, industry free cash flow (operating cash flow minus capital expenditures) is estimated to decrease to less than $\$0.1$ million, or a drop of up to 99.0 percent, compared to the no-new-standards case value of $\$0.7$ million in 2026, the year leading up to the analyzed compliance date of potential amended energy conservation standards.

Percentage impacts on INPV are moderately negative at EL 3. DOE projects that in the analyzed year of compliance (2027), 9 percent of CPSV shipments in product class 1, 2 percent of CPSV shipments in product class 2, and 14 percent of CPSV shipments in product class 3 will meet max-tech. DOE expects CPSV manufacturers to incur approximately $\$1.3$ million in product conversion costs to update brochures and marketing material and re-test and redesigned CPSV models that would need to be redesigned if standards were set at EL 3. Additionally, CPSV manufacturers would incur between $\$0.4$ million and $\$0.1$ million in capital conversion costs to fabricate new plastic nozzle molds to accommodate spray patterns that could meet potential standards set at EL 3.

2. Direct Impacts on Employment

The design option specified for achieving greater ELs (*i.e.*, changing the total spray hole area of the CPSV nozzle) does not increase the labor content (measured in dollars) of commercial prerinse spray valves at any EL, nor does it increase total MPC or labor associated with manufacturing commercial prerinse spray valves. Additionally, total industry shipments are forecasted to be constant at all the analyzed standard levels. Therefore, DOE predicts no change in domestic manufacturing employment levels due to any of the analyzed standard levels.

3. Impacts on Manufacturing Capacity

Not every CPSV manufacturer makes CPSV models that could meet all the analyzed amended energy conservation standards for all product classes. However, DOE believes that manufacturers would not need to make substantial platform changes or significant investments for their CPSV products to meet any of the amended energy conservation standards analyzed in this rulemaking. Therefore, DOE does not foresee any significant impact on manufacturing capacity due to any of

the analyzed amended energy conservation standards.

4. Impacts on Subgroups of Manufacturers

Using average cost assumptions to develop an industry cash-flow estimate may not be adequate for assessing differential impacts among manufacturer subgroups. Small manufacturers, niche product manufacturers, and manufacturers exhibiting cost structures substantially different from the industry average could be affected disproportionately. DOE analyzed the impacts on small businesses in section VI.B of this document. DOE did not identify any other manufacturer subgroups for this rulemaking.

5. Cumulative Regulatory Burden

One aspect of assessing manufacturer burden involves looking at the cumulative impact of multiple DOE standards and the product-specific regulatory actions of other Federal agencies that affect the manufacturers of a covered product. While any one regulation may not impose a significant burden on manufacturers, the combined effects of several existing or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. In addition to energy conservation standards, other regulations can significantly affect manufacturers' financial operations. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE typically conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to appliance efficiency. However, given the tentative conclusion discussed in section V.D of this document, DOE did not conduct a cumulative regulatory burden analysis.

C. National Impact Analysis

This section presents DOE's estimates of the NES and the NPV of consumer benefits that would result from each of the ELs considered as potential amended standards.

1. Significance of Energy Savings

To estimate the energy savings attributable to potential amended standards for commercial prerinse spray valves, DOE compared their energy consumption under the no-new-

standards case to their anticipated energy consumption under each EL. The savings are measured over the entire lifetime of product purchased in the 30-year period that begins in the year of anticipated compliance with amended

standards (2027–2056). Table V.4 presents DOE’s projections of the NES for each efficiency level considered for commercial prerinse spray valves. The savings were calculated using the nearest neighbor switch scenario as

described in section IV.F.1 of this document. The savings were calculated using the approach described in section IV.G of this document.

TABLE V.4—CUMULATIVE NATIONAL ENERGY AND WATER SAVINGS FOR COMMERCIAL PRERINSE SPRAY VALVES; 30 YEARS OF SHIPMENTS (2027–2056)

Efficiency level	National energy savings			National water savings (billion gal)
	Site energy (quads)	Primary energy (quads)	FFC energy (quads)	
1	0.014	0.052	0.055	53.153
2	0.010	0.037	0.039	37.882
3	0.011	0.039	0.041	39.435

Table V.5 presents DOE’s projections of the NES for each efficiency level considered for commercial prerinse

spray valves. The savings were calculated using the product switch scenario as described in section IV.F.2

of this document. The savings were calculated using the approach described in section IV.G of this document.

TABLE V.5—CUMULATIVE NATIONAL ENERGY AND WATER SAVINGS FOR COMMERCIAL PRERINSE SPRAY VALVES; 30 YEARS OF SHIPMENTS (2027–2056)—PRODUCT SWITCH SCENARIO

Efficiency level	National energy savings *			National water savings * (billion gal)
	Site energy (quads)	Primary energy (quads)	FFC energy (quads)	
1	(0.028)	(0.102)	(0.108)	(104.043)
2	(0.032)	(0.117)	(0.123)	(119.313)
3	(0.032)	(0.116)	(0.122)	(117.761)

* Values in parenthesis indicate negative values.

OMB Circular A–4²⁶ requires agencies to present analytical results, including separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs. Circular A–4 also directs agencies to consider the variability of key elements underlying the estimates of benefits and costs. For this proposed determination, DOE undertook a sensitivity analysis using 9 years, rather than 30 years, of product shipments. The choice of a 9-year period is a proxy

for the timeline in EPCA for the review of certain energy conservation standards and potential revision of and compliance with such revised standards.²⁷ The review timeframe established in EPCA is generally not synchronized with the product lifetime, product manufacturing cycles, or other factors specific to commercial prerinse spray valves. Thus, such results are presented for informational purposes only and are not indicative of any change in DOE’s analytical

methodology. The NES sensitivity analysis results based on a 9-year analytical period are presented in Table V.6. The saving values in Table V.6 were calculated using the nearest neighbor product class switching scenario as described in section IV.F.1 of this document. The impacts are counted over the lifetime of commercial prerinse spray valves purchased in 2027–2035.

TABLE V.6—CUMULATIVE NATIONAL ENERGY AND WATER SAVINGS FOR COMMERCIAL PRERINSE SPRAY VALVES; 9 YEARS OF SHIPMENTS (2027–2035)

Efficiency level	National energy savings			National water savings (billion gal)
	Site energy (quads)	Primary energy (quads)	FFC energy (quads)	
1	0.004	0.014	0.015	14.315
2	0.003	0.010	0.011	10.203

²⁶ U.S. Office of Management and Budget. *Circular A–4: Regulatory Analysis*. September 17, 2003. Available at https://obamawhitehouse.archives.gov/omb/circulars_a004_a-4/.

²⁷ Section 325(m) of EPCA requires DOE to review its standards at least once every 6 years, and requires, for certain products, a 3-year period after any new standard is promulgated before

compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the previous standards. If DOE makes a determination that amended standards are not needed, it must conduct a subsequent review within three years following such a determination. As DOE is evaluating the need to amend the standards, the sensitivity analysis is based on the review timeframe associated with amended standards. While adding a 6-year review to the 3-

year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6-year period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some products, the compliance period is 5 years rather than 3 years.

TABLE V.6—CUMULATIVE NATIONAL ENERGY AND WATER SAVINGS FOR COMMERCIAL PRERINSE SPRAY VALVES; 9 YEARS OF SHIPMENTS (2027–2035)—Continued

Efficiency level	National energy savings			National water savings (billion gal)
	Site energy (quads)	Primary energy (quads)	FFC energy (quads)	
3	0.003	0.010	0.011	10.621

The savings in Table V.7 were calculated using the product switch scenario as described in section IV.F.2

of this document. The impacts are counted over the lifetime of commercial

prerinse spray valves purchased in 2027–2035.

TABLE V.7—CUMULATIVE NATIONAL ENERGY AND WATER SAVINGS FOR COMMERCIAL PRERINSE SPRAY VALVES; 9 YEARS OF SHIPMENTS (2027–2035)—PRODUCT SWITCH SCENARIO

Efficiency level	National energy savings *			National water savings* (billion gal)
	Site energy (quads)	Primary energy (quads)	FFC energy (quads)	
1	(0.008)	(0.028)	(0.029)	(28.022)
2	(0.009)	(0.032)	(0.033)	(32.134)
3	(0.009)	(0.031)	(0.033)	(31.716)

* Values in parenthesis indicate negative values.

2. Net Present Value of Consumer Costs and Benefits

DOE estimated the cumulative NPV of the total costs and savings for consumers that would result from the

ELs considered for commercial prerinse spray valves. In accordance with OMB’s guidelines on regulatory analysis,²⁸ DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. Table V.8 shows the consumer

NPV results with impacts counted over the lifetime of product purchased in 2027–2056. Values in Table V.8 are based on the shipments as described in section IV.F.1 of this document.

TABLE V.8—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR COMMERCIAL PRERINSE SPRAY VALVES; 30 YEARS OF SHIPMENTS (2027–2056)

Efficiency level	Net present value (billion \$2020)	
	7-percent discount rate	3-percent discount rate
1	0.350	0.770
2	0.249	0.549
3	0.259	0.572

DOE also calculated the NPV for the alternate shipment scenario (as described in section IV.F.1) using both

a 7-percent and a 3-percent real discount rate. Table V.9 shows the consumer NPV results with impacts

counted over the lifetime of product purchased in 2027–2056.

TABLE V.9—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR COMMERCIAL PRERINSE SPRAY VALVES; 30 YEARS OF SHIPMENTS (2027–2056)—PRODUCT SWITCH SCENARIO

Efficiency level	Net present value (billion \$2020) *	
	7-percent discount rate	3-percent discount rate
1	(0.684)	(1.508)
2	(0.785)	(1.729)
3	(0.774)	(1.707)

* Values in parenthesis indicate negative values.

²⁸ U.S. Office of Management and Budget. Circular A–4: Regulatory Analysis. September 17,

2003. Available at <https://>

obamawhitehouse.archives.gov/omb/circulars_a004_a-4/.

The NPV results based on the aforementioned 9-year analytical period are presented in Table V.10. The impacts are counted over the lifetime of

product purchased in 2027–2035. As mentioned previously, such results are presented for informational purposes only and are not indicative of any

change in DOE’s analytical methodology or decision criteria.

TABLE V.10—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR COMMERCIAL PRERINSE SPRAY VALVES; 9 YEARS OF SHIPMENTS (2027–2035)

Efficiency level	Net present value (billion \$2020)	
	7-percent discount rate	3-percent discount rate
1	0.160	0.246
2	0.112	0.176
3	0.116	0.183

The NPV results based on the 9-year analytical period (2027–2035) for the alternate shipment scenario (as

described in section IV.F.1) are presented in Table V.11.

TABLE V.11—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR COMMERCIAL PRERINSE SPRAY VALVES; 9 YEARS OF SHIPMENTS (2027–2035)—PRODUCT SWITCH SCENARIO

Efficiency level	Net present value (billion \$2020)*	
	7-percent discount rate	3-percent discount rate
1	(0.306)	(0.482)
2	(0.351)	(0.553)
3	(0.347)	(0.546)

* Values in parenthesis indicate negative values.

D. Proposed Determination

As required by EPCA, this NOPD analyzes whether amended standards for commercial prerinse spray valves would result in significant conservation of energy, be technologically feasible, and be cost effective. (42 U.S.C. 6295(m)(1)(A) and 42 U.S.C. 6295(n)(2)) Additionally, DOE also estimated the impact on manufacturers. The criteria considered under 42 U.S.C. 6295(m)(1)(A) and the additional analysis are discussed in the following subsections. Because an analysis of potential cost effectiveness and energy savings first require an evaluation of the relevant technology, DOE first discusses the technological feasibility of amended standards. DOE then addresses the cost effectiveness and energy savings associated with potential amended standards.

1. Technological Feasibility

EPCA mandates that DOE consider whether amended energy conservation standards for commercial prerinse spray valves would be technologically feasible. (42 U.S.C. 6295(m)(1)(A) and 42 U.S.C. 6295(n)(2)(B)) DOE has tentatively determined that there are technology options that would improve

the efficiency of commercial prerinse spray valves. These technology options are being used in commercially available commercial prerinse spray valves and therefore are technologically feasible. (See section IV.A.2 for further information.) Hence, DOE has tentatively determined that amended energy conservation standards for commercial prerinse spray valves are technologically feasible.

2. Cost Effectiveness

EPCA requires DOE to consider whether energy conservation standards for commercial prerinse spray valves would be cost effective through an evaluation of the savings in operating costs throughout the estimated average life of the covered product compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered product which are likely to result from the imposition of an amended standard. (42 U.S.C. 6295(m)(1)(A), 42 U.S.C. 6295(n)(2)(C), and 42 U.S.C. 6295(o)(2)(B)(i)(II)) DOE conducted an LCC analysis to estimate the net costs/benefits to users from increased efficiency in the considered commercial prerinse spray valves. (See results in Table V.1.) DOE then aggregated the results from the LCC

analysis to estimate the NPV of the total costs and benefits experienced by the Nation. (See results in Table V.8 and Table V.10.) As noted, the inputs for determining the NPV are (1) total annual installed cost, (2) total annual operating costs (energy costs and repair and maintenance costs), and (3) a discount factor to calculate the present value of costs and savings.

DOE considered each of the efficiency levels. All efficiency levels would result in positive NPV at the 3-percent and 7-percent discount rates. However, in DOE’s sensitivity analysis, wherein a subset of consumers exit the CPSV market and switch to higher flow-rate products such as faucets (product switch scenario), all efficiency levels would result in a negative NPV at the 3-percent and 7-percent discount rates.

DOE notes that the lack of incremental costs to consumers associated with higher-efficiency products makes LCC and NPV values cost-effective. However, the potential reduction in consumer utility risks driving consumers to alternative products with higher flow-rates. As discussed in section IV.F.2 of this document, the change in product availability since the January 2016 Final Rule makes it more likely that certain

consumers would switch to higher flow-rate products in response to amended standards. This shift increases the likelihood that amended standards could result in a negative NPV.

Therefore, DOE has tentatively determined that amended standards would not be economically justified at any efficiency level due to the increased likelihood of consumers switching products to higher flow-rate products as a result of decreased consumer utility due to potential amended standards, and the corresponding negative NPV of this product switch scenario.

3. Significant Conservation of Energy

EPCA also mandates that DOE consider whether amended energy conservation standards for commercial prerinse spray valves would result in significant conservation of energy. (42 U.S.C. 6295(m)(1)(A) and 42 U.S.C. 6295(n)(2)(A)) To estimate the energy savings attributable to potential amended standards for commercial prerinse spray valves, DOE compared their energy consumption under the no-new-standards case to their anticipated energy consumption under each potential standard level. The savings are measured over the entire lifetime of product purchased in the 30-year period that begins in the year of anticipated compliance with amended standards (2027–2056).

DOE estimates that amended standards for commercial prerinse spray valves would result in maximum energy savings of 0.014 site energy quads and 0.055 FFC energy savings at EL1 over a 30-year analysis period (2027–2056). (See results in Table V.4 of this document.) However, in DOE's sensitivity analysis, wherein a subset of consumers exit the CPSV market and switch to higher flow-rate products such as faucets (product switch scenario), amended standards could result in an increase in national site energy use between 0.028 (EL1) and 0.032 (EL3) quads and an increase in FFC energy use between 0.108 (EL1) and 0.124 (EL3) quads over a 30-year analysis period (2027–2056). (See results in Table V.5.) As discussed in section IV.F.2 of this document, the change in product availability since the January 2016 Final Rule makes it more likely that certain consumers would switch to higher flow-rate products in response to amended standards. This shift increases the likelihood that amended standards could result in increased energy and water usage.

4. Additional Consideration

EPCA lists several additional factors for DOE to consider in deciding whether

to amend energy conservation standards. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII)) In this analysis, DOE investigated the manufacturer impacts of any potential amended standards. DOE estimates that amended standards for commercial prerinse spray valves would result in a reduction in INPV between 7.5 and 9.5 percent. (See results in Table V.2 and Table V.3 of this document)

DOE also considers any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) As noted in section IV.F, spray force is a driving factor of consumer utility and consumer satisfaction. As discussed in section IV.B.1.b, there is a direct relationship between flow rate and spray force. Therefore, the relationship between consumer satisfaction and spray force for commercial prerinse spray valves makes it possible that consumers may opt to switch product classes if they are unsatisfied with the spray force available to them in their current product class due to amended standards. In some cases, consumers react to amended standards by switching to a commercial prerinse spray valve, or alternative product, that consumes more water and energy than their current product. DOE accounted for this potential reduction in utility in its shipments analysis by considering the possibility of both the nearest neighbor switch scenario (section IV.F.1) and the product switch scenario (section IV.F.2).

5. Summary

In this proposed determination, although some energy savings are possible in the standards case analysis, there is risk that amended standards could result in increased energy consumption if consumers switch to higher water usage products, like faucets (product switch scenario). Similarly, the product switch scenario would also result in a negative NPV for the total costs and savings for consumers. As discussed in section IV.F.2 of this document, the change in product availability since the 2016 Final Rule makes it more likely that consumers would switch to higher water usage products in the presence of amended standards. Therefore, it is more likely that amended standards could result in increases in water, energy, and costs. The risk of these potential increases outweigh the cost effectiveness of any new or amended standards.

As such, any potential benefits from amended standards are outweighed by this risk and the additional burden on

manufacturers. DOE has tentatively determined based on the estimated negative NIA values resulting from product switching and the estimated additional burden on manufacturers, new or amended standards would not be economically justified. Therefore, DOE has tentatively determined that amended standards for commercial prerinse spray valves are not needed. DOE will consider all comments received on this proposed determination in issuing any final determination.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

This proposed determination has been determined to be not significant for purposes of Executive Order (“E.O.”) 12866, “Regulatory Planning and Review,” 58 FR 51735 (Oct. 4, 1993). As a result, the OMB did not review this proposed determination.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (“IRFA”) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel’s website (<https://energy.gov/gc/office-general-counsel>).

DOE reviewed this proposed determination under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. Because DOE is proposing not to amend standards for commercial prerinse spray valves, if adopted, the determination would not amend any energy conservation standards. On the basis of the foregoing, DOE certifies that the proposed determination, if adopted, would have no significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared an IRFA for this proposed determination. DOE will transmit this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the

Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

Manufacturers of commercial preinse spray valves must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial product, including commercial preinse spray valves. (See generally 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (“PRA”). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours 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.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

DOE is analyzing this proposed action in accordance with the National Environmental Policy Act of 1969 (“NEPA”) and DOE’s NEPA implementing regulations. 10 CFR part 1021 DOE’s regulations include a categorical exclusion for actions which are interpretations or rulings with respect to existing regulations. 10 CFR part 1021, subpart D, appendix A4 DOE anticipates that this action qualifies for categorical exclusion A4 because it is an interpretation or ruling in regards to an existing regulation and otherwise meets the requirements for application of a categorical exclusion. See 10 CFR 1021.410. DOE will complete its NEPA review before issuing the final action.

E. Review Under Executive Order 13132

E.O. 13132, “Federalism,” 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies

formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed determination and has tentatively determined that it 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) Therefore, no further action is required by E.O. 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, “Civil Justice Reform,” imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section

3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed determination meets the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (“UMRA”) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a)–(b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed “significant intergovernmental mandate,” and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE’s policy statement is also available at https://www.energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.

DOE examined this proposed determination according to UMRA and its statement of policy and determined that the proposed determination does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of \$100 million or more in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. As a result, the analytical requirements of UMRA do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family

Policymaking Assessment for any rule that may affect family well-being. This proposed determination would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to E.O. 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (Mar. 15, 1988), DOE has determined that this proposed determination would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M-19-15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at <https://www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf>. DOE has reviewed this NOPD under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

E.O. 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs ("OIRA") at OMB, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under E.O. 12866, or any successor Executive Order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of

OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This proposed determination, which does not propose to amend energy conservation standards for commercial prerinse spray valves, is not a significant regulatory action under E.O. 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy ("OSTP"), issued its Final Information Quality Bulletin for Peer Review ("the Bulletin"). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are "influential scientific information," which the Bulletin defines as "scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions." 70 FR 2664, 2667.

In response to OMB's Bulletin, DOE conducted formal peer reviews of the energy conservation standards development process and the analyses that are typically used and has prepared Peer Review report pertaining to the energy conservation standards rulemaking analyses.²⁹ Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and

²⁹ "Energy Conservation Standards Rulemaking Peer Review Report." 2007. Available at <https://www.energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0>.

management effectiveness of programs and/or projects. DOE has determined that the peer-reviewed analytical process continues to reflect current practice, and the Department followed that process for considering amended energy conservation standards in the case of the present action.

VII. Public Participation

A. Participation in the Webinar

The time and date of the webinar are listed in the **DATES** section at the beginning of this document. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website at <https://cms.doe.gov/eere/buildings/public-meetings-and-comment-deadlines>. Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has an interest in the topics addressed in this notice, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the webinar. Such persons may submit such request to ApplianceStandardsQuestions@ee.doe.gov. Persons who wish to speak should include with their request a computer file in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

Persons requesting to speak should briefly describe the nature of their interest in this rulemaking and provide a telephone number for contact. DOE requests persons selected to make an oral presentation to submit an advance copy of their statements at least two weeks before the webinar. At its discretion, DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Office. As necessary, requests to give an oral presentation should ask for such alternative arrangements.

C. Conduct of the Webinar

DOE will designate a DOE official to preside at the webinar/public meeting and may also use a professional

facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the webinar. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the webinar and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the proposed determination.

The webinar will be conducted in an informal, conference style. DOE will present summaries of comments received before the webinar, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this proposed determination. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this proposed determination. The official conducting the webinar/public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the webinar.

A transcript of the webinar will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this NOPD and will be accessible on the DOE website. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed determination no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit

comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (“CBI”). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email. Comments and documents submitted via email also will be posted to *www.regulations.gov*. If you do not want your personal contact information to be publicly viewable, do not include it in

your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. No faxes will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English, and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked “confidential” including all the information believed to be confidential, and one copy of the document marked “non-confidential” with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. DOE seeks comment on its determination that PCAs would not change the flow rate or spray force at DOE's test pressure.
2. DOE seeks comment on its new max-tech efficiency level for product class 1.

3. DOE seeks comment and data regarding any changes in MPC that would not be accounted for by updating the cost analysis of the previously conducted product teardowns. Specifically, DOE seeks any data that would contradict its determination of no incremental cost associated with improvements in efficiency of commercial prerinse spray valves.

4. DOE seeks comment on the markup channels, the percentage through each channel, and the baseline markup of commercial prerinse spray valves.

5. DOE seeks comment on the methods to improve DOE's energy-use analysis, as well as any supporting alternate operating hour estimates for operation of commercial prerinse spray valves. DOE seeks comment on water pressure and the end-use temperature.

6. DOE seeks comment on the product-class switching methodology used in this analysis, including any logic consumers may employ when switching as well as the portion of consumers that may switch.

7. DOE seeks comment on the approach used to analyze the possibility of some consumers exiting the CPSV market for higher flow-rate products, including any

logic consumers may employ when switching as well as the portion of consumers that may switch.

8. DOE seeks comment on the use of 6.89 as a real discount rate for CPSV manufacturers.

9. DOE seeks comment on the methodology for estimating manufacturer conversion costs used in the two conversion cost scenarios (the sourced conversion cost scenario and the fabricated conversion cost scenario). Additionally, DOE seeks comment of how many manufacturers fabricate plastic nozzles in-house versus how many manufacturers out-source the production of the plastic nozzles for their commercial prerinse spray valves.

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notification of proposed determination.

Signing Authority

This document of the Department of Energy was signed on August 3, 2021, by Kelly Speakes-Backman, Principal

Deputy Assistant Secretary and Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on August 5, 2021.

Treena V. Garrett,

*Federal Register Liaison Officer, U.S.
Department of Energy.*

[FR Doc. 2021-16995 Filed 8-17-21; 8:45 am]

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FEDERAL REGISTER

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Part III

Postal Service

Change in Rates and Classes of General Applicability for Competitive Products; Notice

POSTAL SERVICE**Change in Rates and Classes of General Applicability for Competitive Products**

AGENCY: Postal Service™.

ACTION: Notice of a change in rates of general applicability for competitive products.

SUMMARY: This notice sets forth time-limited changes in rates of general applicability for competitive products.

DATES: The change in rates is effective October 3, 2021.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: On August 5, 2021, pursuant to their authority under 39 U.S.C. 3632, the Governors of the Postal Service established time-limited price changes for competitive products. The Governors' Decision and the record of proceedings in connection with such decision are reprinted below in accordance with section 3632(b)(2).

Ruth Stevenson,

Chief Counsel, Ethics and Legal Compliance.

Decision of the Governors of the United States Postal Service on Changes in Rates of General Applicability for Competitive Products (Governors' Decision No. 21–5)

August 5, 2021

Statement of Explanation and Justification

Pursuant to authority under section 3632 of title 39, as amended by the Postal Accountability and Enhancement Act of 2006 ("PAEA"), we establish new prices of general applicability for certain domestic shipping services (competitive products), and concurrent classification changes to effectuate the new prices. These prices shall be in effect from October 3, 2021 until December 26, 2021, at which time prices will be restored to the levels that were in effect prior to these increases. The changes are described generally below, with a detailed description of the changes in the attachment. The attachment includes the draft Mail Classification Schedule sections with the new prices that will take effect on October 3 displayed in the price charts, as well as the Mail Classification Schedule sections with the prices that will be restored on December 26.

As shown in the nonpublic annex being filed under seal herewith, the changes we establish should enable each competitive product to cover its

attributable costs (39 U.S.C. 3633(a)(2)) and should result in competitive products as a whole complying with 39 U.S.C. 3633(a)(3), which, as implemented by 39 CFR 3035.107(c), requires competitive products collectively to contribute a minimum of 10.0 percent to the Postal Service's institutional costs. Accordingly, no issue of subsidization of competitive products by market dominant products should arise (39 U.S.C. 3633(a)(1)). We therefore find that the new prices are in accordance with 39 U.S.C. 3632–3633 and 39 CFR 3035.102.

I. Domestic Products

A. Priority Mail Express

Overall, the Priority Mail Express price change represents a 2.3 percent increase. The existing structure of zoned Retail, Commercial Base, and Commercial Plus price categories is maintained, with Commercial Base and Commercial Plus prices continuing to be set equal to each other. Retail prices will increase 2.3 percent on average. The Commercial Base and Commercial Plus price categories will increase 2.2 percent on average.

B. Priority Mail

On average, the Priority Mail prices will be increased by 5.7 percent. The existing structure of Priority Mail Retail, Commercial Base, and Commercial Plus price categories is maintained. Retail prices will increase 5.3 percent on average. The Commercial Base price category will increase 6.3 percent on average, while the Commercial Plus price category will increase 6.3 percent on average.

C. Parcel Select

On average, prices for destination-entered non-Lightweight Parcel Select, the Postal Service's bulk ground shipping product, will increase 11.0 percent. The prices for destination delivery unit (DDU) entered parcels will not change. For destination sectional center facility (DSCF) destination entered parcels, the average price increase is 15.9 percent. For destination network distribution center (DNDC) parcels, the average price increase is 12.5 percent. Prices for Parcel Select Lightweight will increase by 5.3 percent, while Parcel Select Ground will see a 6.2 percent price increase.

D. Parcel Return Service

Parcel Return Service prices will have an overall price increase of 13.0 percent. Prices for parcels retrieved at a return

sectional center facility (RSCF) will increase by 7.4 percent, and prices for parcels picked up at a return delivery unit (RDU) will increase 18.7 percent.

E. First-Class Package Service

First-Class Package Service (FCPS) continues to be positioned as a lightweight (less than one pound) offering primarily used by businesses for fulfillment purposes. Overall, FCPS prices will increase 7.6 percent, which reflects a 8.0 increase for FCPS-Commercial, and a 6.4 increase for FCPS-Retail prices.

F. USPS Retail Ground

USPS Retail Ground prices will increase 5.3 percent. Customers shipping in Zones 1–4 will continue to receive Priority Mail service and will only default to USPS Retail Ground if the item contains hazardous material or is otherwise not permitted to travel by air transportation.

No price changes are being made to Special Services or International competitive products.

Order

The changes in prices set forth herein shall be effective at 12:01 a.m. on October 3, 2021, and will be rolled back to current levels on December 26, 2021. We direct the Secretary of the Board of Governors to have this decision published in the **Federal Register** in accordance with 39 U.S.C. 3632(b)(2), and direct management to file with the Postal Regulatory Commission appropriate notice of these changes.

By The Governors:

/s/

Ron A. Bloom,
Chairman, Board of Governors.

**UNITED STATES POSTAL SERVICE
OFFICE OF THE BOARD OF
GOVERNORS**

**Certification of Governors' Vote on
Governors' Decision No. 21–5**

Consistent with 39 U.S.C. 3632(a), I hereby certify that, on August 6, 2021, the Governors voted on adopting Governors' Decision No. 21–5, and that a majority of the Governors then holding office voted in favor of that Decision.

Date: August 6, 2021.

/s/

Michael J. Elston,
Secretary of the Board of Governors.

BILLING CODE 7710–12–P

PART B

COMPETITIVE PRODUCTS

2000 COMPETITIVE PRODUCT LIST

2100 *Domestic Products*

* * *

* * *

2105 Priority Mail Express

* * *

2105.6 Prices

Retail Priority Mail Express Zone/Weight

Maximum Weight (pounds)	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
0.5	26.60	26.85	28.80	32.70	34.90	37.10	39.70	53.85
1	27.00	29.10	33.00	38.95	41.90	44.35	46.90	63.60
2	27.40	31.40	37.15	45.25	48.95	51.60	54.05	73.40
3	27.80	33.65	41.35	51.50	55.95	58.90	61.25	83.15
4	28.20	35.95	45.50	57.80	63.00	66.15	68.40	92.95
5	28.60	38.20	49.70	64.05	70.00	73.40	75.60	102.70
6	31.45	41.90	55.10	70.30	76.40	80.30	82.70	112.35
7	34.35	45.60	60.55	76.50	82.80	87.20	89.80	122.05
8	37.20	49.35	65.95	82.75	89.25	94.15	96.90	131.70
9	40.10	53.05	71.40	88.95	95.65	101.05	104.00	141.40
10	42.95	56.75	76.80	95.20	102.05	107.95	111.10	151.05
11	46.25	62.20	82.35	101.70	108.30	114.40	117.75	159.30
12	48.30	66.40	86.70	105.90	112.30	118.60	122.15	165.30
13	50.40	70.65	91.00	110.15	116.35	122.80	126.60	171.35
14	52.45	74.85	95.30	114.35	120.35	127.00	131.00	177.35
15	54.50	79.05	99.60	118.55	124.35	131.20	135.40	183.35
16	56.55	83.25	103.95	122.80	128.35	135.45	139.80	189.35
17	58.60	87.45	108.25	127.00	132.35	139.65	144.20	195.35
18	60.70	91.70	112.55	131.25	136.40	143.85	148.65	201.40
19	62.75	95.90	116.90	135.45	140.40	148.05	153.05	207.40
20	64.80	100.10	121.20	139.70	144.40	152.25	157.45	213.40
21	68.10	105.65	127.05	147.15	151.90	160.00	165.45	223.55
22	70.45	110.15	131.90	152.55	157.45	165.75	171.45	231.75
23	72.75	114.70	136.70	158.00	162.95	171.50	177.45	239.90
24	75.05	119.20	141.55	163.40	168.50	177.20	183.45	248.10
25	77.35	123.75	146.40	168.85	174.00	182.95	189.45	256.25

Retail Priority Mail Express Zone/Weight (Continued)

Maximum Weight (pounds)	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
26	79.70	128.30	151.25	174.30	179.50	188.70	195.45	264.40
27	82.00	132.80	156.10	179.70	185.05	194.45	201.45	272.60
28	84.30	137.35	160.90	185.15	190.55	200.20	207.40	280.75
29	86.60	141.85	165.75	190.55	196.10	205.95	213.40	288.95
30	88.95	146.40	170.60	196.00	201.60	211.70	219.40	297.10
31	91.25	150.95	175.45	201.45	207.10	217.45	225.40	305.25
32	93.55	155.45	180.30	206.85	212.65	223.15	231.40	313.45
33	95.85	160.00	185.10	212.30	218.15	228.90	237.40	321.60
34	98.20	164.50	189.95	217.70	223.70	234.65	243.40	329.80
35	100.50	169.05	194.80	223.15	229.20	240.40	249.40	337.95
36	103.05	173.50	199.90	229.00	235.30	246.75	255.95	346.95
37	105.25	177.70	205.05	234.65	241.45	253.10	262.65	355.80
38	107.65	182.20	210.15	240.45	247.35	259.20	268.95	364.60
39	110.25	186.55	215.40	246.10	252.90	265.05	275.50	373.50
40	112.55	190.70	220.55	251.95	259.00	271.20	282.15	382.50
41	114.70	195.15	226.70	258.80	266.45	279.05	290.00	393.10
42	116.70	199.55	231.90	264.40	272.65	285.30	296.45	402.00
43	119.35	203.85	236.85	270.10	278.55	291.40	303.00	411.00
44	121.50	208.25	242.10	275.85	284.40	297.55	309.60	419.75
45	123.80	212.60	247.10	281.40	290.35	303.70	316.25	428.90
46	126.10	216.80	252.55	287.25	296.35	309.75	322.70	437.70
47	128.75	221.15	257.55	292.90	302.40	316.05	329.25	446.60
48	130.85	225.70	262.60	298.45	308.35	322.15	335.80	455.55
49	133.20	229.85	267.85	304.15	314.55	328.50	342.30	464.55
50	135.95	234.35	273.00	309.95	320.35	334.50	348.85	473.40

Retail Priority Mail Express Zone/Weight (Continued)

Maximum Weight (pounds)	Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
51	138.30	238.75	278.15	315.55	326.25	340.55	354.55	481.10
52	140.60	242.80	283.20	321.10	332.45	346.85	362.20	491.35
53	142.90	247.35	288.45	326.75	338.45	353.05	368.65	500.30
54	145.40	251.70	293.50	332.25	344.55	359.25	375.10	509.10
55	148.25	257.45	298.80	338.05	350.40	365.25	381.65	518.00
56	151.25	261.90	305.25	345.25	358.00	373.25	390.05	529.55
57	153.85	266.25	310.45	351.00	364.00	379.30	396.60	538.35
58	156.40	270.45	315.60	356.55	370.10	385.55	403.15	547.30
59	158.55	274.80	320.65	362.10	376.30	391.75	409.75	556.25
60	160.65	279.20	325.90	367.80	382.25	397.85	416.30	565.25
61	162.90	283.55	331.35	373.75	388.25	403.95	422.85	574.20
62	165.40	287.85	336.40	379.10	394.20	410.10	429.60	583.30
63	168.05	292.15	341.55	384.80	400.35	416.35	436.15	592.30
64	170.35	296.45	346.65	390.25	406.45	422.60	442.75	601.35
65	173.20	300.80	351.80	395.85	412.45	428.45	449.30	610.10
66	176.40	305.30	357.10	401.60	418.50	434.60	455.85	618.85
67	178.40	309.55	362.35	407.25	424.25	440.55	462.40	628.05
68	180.70	313.85	367.45	412.70	430.55	446.95	469.20	637.25
69	183.50	318.25	372.55	418.35	436.45	452.90	475.50	645.80
70	186.80	322.65	377.80	423.95	442.50	459.00	482.10	654.85

Retail Flat Rate Envelope

	(\$)
Retail Regular Flat Rate Envelope, per piece	27.10
Retail Legal Flat Rate Envelope, per piece	27.25
Retail Padded Flat Rate Envelope, per piece	27.70

Retail Dimensional Weight

In Zones 1-9 (including local), parcels exceeding one cubic foot are priced at the actual weight or the dimensional weight, whichever is greater.

For box-shaped parcels, the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) of the parcel, and dividing by 166.

For irregular-shaped parcels (parcels not appearing box-shaped), the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) at the associated maximum cross-sections of the parcel, dividing by 166, and multiplying by an adjustment factor of 0.785.

Loyalty Program

Upon the initiation of the Loyalty Program, all USPS business customers who use Click-N-Ship will be automatically enrolled in the Basic tier of the Loyalty Program, thereby earning a \$40 credit for every \$500 combined spent at Priority Mail Express Retail and Priority Mail Retail rates.

Beginning on January 1, 2021, and on every January 1 thereafter, all USPS business customers who use Click-N-Ship will be enrolled in one of the following three tiers of the Loyalty Program, based on their combined shipping spend at Priority Mail Express Retail and Priority Mail Retail rates in the previous calendar year, as follows:

- Basic (no minimum spend):
Earn \$40 credit for every \$500 spent
- Silver (at least \$10,000 spend):
Earn \$50 credit for every \$500 spent
- Gold (at least \$20,000 spend):
Qualify for Commercial Base Pricing

In the first year of the Loyalty Program, any new USPS business customer who uses Click-N-Ship will receive a one-time \$40 "Welcome Bonus" credit upon shipping at least \$500 combined at Priority Mail Express Retail and Priority Mail Retail rates.

All participants in the Loyalty Program will be eligible to receive an additional one-time \$20 credit for shipping during the first two months of the program, which will be applied once participants ship at least \$500 combined at Priority Mail Express Retail and Priority Mail Retail rates.

All credits must be redeemed within one year from the date of issuance.

Commercial Base Zone/Weight

Maximum Weight (pounds)	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
0.5	23.00	23.55	25.25	28.20	30.15	32.15	34.75	46.90
1	23.25	25.45	28.80	33.20	35.75	38.00	40.60	54.80
2	23.50	27.30	32.35	38.25	41.35	43.80	46.45	62.75
3	23.75	29.20	35.90	43.25	47.00	49.65	52.30	70.65
4	24.00	31.05	39.45	48.30	52.60	55.45	58.15	78.60
5	24.25	32.95	43.00	53.30	58.20	61.30	64.00	86.50
6	26.70	36.20	47.75	58.55	63.60	67.15	70.10	94.75
7	29.15	39.45	52.50	63.80	69.00	73.00	76.15	103.00
8	31.65	42.75	57.25	69.05	74.45	78.85	82.25	111.20
9	34.10	46.00	62.00	74.30	79.85	84.70	88.30	119.45
10	36.55	49.25	66.75	79.55	85.25	90.55	94.40	127.70
11	39.70	54.40	72.05	85.90	91.40	96.95	101.05	135.90
12	41.60	58.30	76.05	89.95	95.35	101.05	105.40	141.85
13	43.55	62.20	80.10	94.05	99.25	105.20	109.80	147.80
14	45.45	66.10	84.15	98.10	103.15	109.30	114.15	153.75
15	47.35	70.00	88.15	102.20	107.10	113.45	118.55	159.65
16	49.25	73.85	92.20	106.30	111.00	117.55	122.90	165.60
17	51.15	77.75	96.25	110.35	114.90	121.70	127.30	171.55
18	53.10	81.65	100.30	114.45	118.80	125.80	131.65	177.50
19	55.00	85.55	104.30	118.50	122.75	129.95	136.05	183.45
20	56.90	89.45	108.35	122.60	126.65	134.05	140.40	189.40
21	59.95	94.55	113.55	129.25	133.35	140.95	147.60	198.45
22	62.00	98.65	117.75	133.85	138.05	145.90	152.80	205.50
23	64.05	102.75	122.00	138.50	142.80	150.80	158.00	212.55
24	66.10	106.85	126.20	143.15	147.50	155.70	163.20	219.60
25	68.15	110.95	130.40	147.75	152.20	160.65	168.40	226.65

Commercial Base Zone/Weight (Continued)

Maximum Weight (pounds)	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
26	70.20	115.05	134.60	152.40	156.90	165.55	173.60	233.70
27	72.25	119.15	138.80	157.05	161.60	170.45	178.80	240.75
28	74.35	123.20	143.05	161.65	166.35	175.40	184.00	247.80
29	76.40	127.30	147.25	166.30	171.05	180.30	189.20	254.85
30	78.45	131.40	151.45	170.95	175.75	185.20	194.40	261.90
31	80.50	135.50	155.65	175.55	180.45	190.15	199.60	268.95
32	82.55	139.60	159.85	180.20	185.15	195.05	204.80	276.00
33	84.60	143.70	164.10	184.85	189.90	199.95	210.00	283.05
34	86.65	147.80	168.30	189.45	194.60	204.90	215.20	290.10
35	88.70	151.90	172.50	194.10	199.30	209.80	220.40	297.15
36	90.95	155.85	177.15	199.15	204.65	215.35	226.15	305.00
37	92.85	159.65	181.60	204.00	209.95	220.85	231.95	312.85
38	94.95	163.65	186.15	209.05	215.00	226.15	237.60	320.50
39	97.25	167.60	190.80	213.95	219.90	231.25	243.40	328.40
40	99.30	171.30	195.40	219.00	225.15	236.70	249.15	336.25
41	101.70	176.15	200.85	224.90	231.60	243.40	256.10	345.60
42	103.45	180.15	205.35	229.85	236.90	248.90	261.75	353.35
43	105.80	183.95	209.85	234.75	242.05	254.20	267.65	361.20
44	107.60	187.95	214.45	239.70	247.15	259.50	273.30	369.00
45	109.65	191.85	218.85	244.50	252.35	264.90	279.20	376.95
46	111.75	195.70	223.65	249.65	257.50	270.20	284.90	384.70
47	114.05	199.60	228.15	254.55	262.70	275.60	290.70	392.55
48	116.00	203.65	232.60	259.25	267.90	280.95	296.45	400.35
49	117.95	207.40	237.20	264.25	273.25	286.50	302.30	408.30
50	120.45	211.45	241.80	269.30	278.30	291.60	308.00	416.00

Commercial Base Zone/Weight (Continued)

Maximum Weight (pounds)	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
51	122.50	215.45	246.30	274.10	283.40	296.95	312.95	422.75
52	124.60	219.15	250.75	278.95	288.85	302.45	319.60	431.80
53	126.55	223.20	255.40	283.90	294.00	307.80	325.35	439.55
54	128.80	227.15	259.85	288.65	299.20	313.20	331.10	447.40
55	131.30	232.30	264.60	293.70	304.35	318.45	336.80	455.15
56	134.60	237.45	270.35	299.95	310.95	325.30	344.30	465.25
57	136.90	241.40	274.95	304.85	316.15	330.65	350.05	473.00
58	139.20	245.15	279.45	309.65	321.50	336.10	355.85	480.85
59	141.10	249.10	284.00	314.55	326.80	341.50	361.60	488.70
60	142.95	253.05	288.60	319.40	332.00	346.80	367.40	496.60
61	144.90	257.10	293.40	324.50	337.20	352.15	373.20	504.45
62	147.15	260.90	297.80	329.20	342.35	357.35	379.10	512.45
63	149.55	264.85	302.40	334.10	347.60	362.85	384.95	520.35
64	151.50	268.75	306.90	338.85	352.90	368.20	390.75	528.20
65	154.05	272.70	311.45	343.75	358.10	373.40	396.45	535.95
66	156.85	276.75	316.15	348.75	363.30	378.85	402.20	543.70
67	158.65	280.60	320.75	353.65	368.35	383.95	408.05	551.70
68	160.70	284.55	325.30	358.35	373.80	389.55	413.95	559.75
69	163.20	288.55	329.80	363.20	378.90	394.75	419.50	567.30
70	166.15	292.45	334.45	368.05	384.15	400.05	425.35	575.20

Commercial Base Flat Rate Envelope

	(\$)
Commercial Base Regular Flat Rate Envelope, per piece	23.50
Commercial Base Legal Flat Rate Envelope, per piece	23.70
Commercial Base Padded Flat Rate Envelope, per piece	24.00

Commercial Base Dimensional Weight

In Zones 1-9 (including local), parcels exceeding one cubic foot are priced at the actual weight or the dimensional weight, whichever is greater.

For box-shaped parcels, the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) of the parcel, and dividing by 166.

For irregular-shaped parcels (parcels not appearing box-shaped), the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) at the associated maximum cross-sections of the parcel, dividing by 166, and multiplying by an adjustment factor of 0.785.

Commercial Plus Zone/Weight

Maximum Weight (pounds)	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
0.5	23.00	23.55	25.25	28.20	30.15	32.15	34.75	46.90
1	23.25	25.45	28.80	33.20	35.75	38.00	40.60	54.80
2	23.50	27.30	32.35	38.25	41.35	43.80	46.45	62.75
3	23.75	29.20	35.90	43.25	47.00	49.65	52.30	70.65
4	24.00	31.05	39.45	48.30	52.60	55.45	58.15	78.60
5	24.25	32.95	43.00	53.30	58.20	61.30	64.00	86.50
6	26.70	36.20	47.75	58.55	63.60	67.15	70.10	94.75
7	29.15	39.45	52.50	63.80	69.00	73.00	76.15	103.00
8	31.65	42.75	57.25	69.05	74.45	78.85	82.25	111.20
9	34.10	46.00	62.00	74.30	79.85	84.70	88.30	119.45
10	36.55	49.25	66.75	79.55	85.25	90.55	94.40	127.70
11	39.70	54.40	72.05	85.90	91.40	96.95	101.05	135.90
12	41.60	58.30	76.05	89.95	95.35	101.05	105.40	141.85
13	43.55	62.20	80.10	94.05	99.25	105.20	109.80	147.80
14	45.45	66.10	84.15	98.10	103.15	109.30	114.15	153.75
15	47.35	70.00	88.15	102.20	107.10	113.45	118.55	159.65
16	49.25	73.85	92.20	106.30	111.00	117.55	122.90	165.60
17	51.15	77.75	96.25	110.35	114.90	121.70	127.30	171.55
18	53.10	81.65	100.30	114.45	118.80	125.80	131.65	177.50
19	55.00	85.55	104.30	118.50	122.75	129.95	136.05	183.45
20	56.90	89.45	108.35	122.60	126.65	134.05	140.40	189.40
21	59.95	94.55	113.55	129.25	133.35	140.95	147.60	198.45
22	62.00	98.65	117.75	133.85	138.05	145.90	152.80	205.50
23	64.05	102.75	122.00	138.50	142.80	150.80	158.00	212.55
24	66.10	106.85	126.20	143.15	147.50	155.70	163.20	219.60
25	68.15	110.95	130.40	147.75	152.20	160.65	168.40	226.65

Commercial Plus Zone/Weight (Continued)

Maximum Weight (pounds)	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
26	70.20	115.05	134.60	152.40	156.90	165.55	173.60	233.70
27	72.25	119.15	138.80	157.05	161.60	170.45	178.80	240.75
28	74.35	123.20	143.05	161.65	166.35	175.40	184.00	247.80
29	76.40	127.30	147.25	166.30	171.05	180.30	189.20	254.85
30	78.45	131.40	151.45	170.95	175.75	185.20	194.40	261.90
31	80.50	135.50	155.65	175.55	180.45	190.15	199.60	268.95
32	82.55	139.60	159.85	180.20	185.15	195.05	204.80	276.00
33	84.60	143.70	164.10	184.85	189.90	199.95	210.00	283.05
34	86.65	147.80	168.30	189.45	194.60	204.90	215.20	290.10
35	88.70	151.90	172.50	194.10	199.30	209.80	220.40	297.15
36	90.95	155.85	177.15	199.15	204.65	215.35	226.15	305.00
37	92.85	159.65	181.60	204.00	209.95	220.85	231.95	312.85
38	94.95	163.65	186.15	209.05	215.00	226.15	237.60	320.50
39	97.25	167.60	190.80	213.95	219.90	231.25	243.40	328.40
40	99.30	171.30	195.40	219.00	225.15	236.70	249.15	336.25
41	101.70	176.15	200.85	224.90	231.60	243.40	256.10	345.60
42	103.45	180.15	205.35	229.85	236.90	248.90	261.75	353.35
43	105.80	183.95	209.85	234.75	242.05	254.20	267.65	361.20
44	107.60	187.95	214.45	239.70	247.15	259.50	273.30	369.00
45	109.65	191.85	218.85	244.50	252.35	264.90	279.20	376.95
46	111.75	195.70	223.65	249.65	257.50	270.20	284.90	384.70
47	114.05	199.60	228.15	254.55	262.70	275.60	290.70	392.55
48	116.00	203.65	232.60	259.25	267.90	280.95	296.45	400.35
49	117.95	207.40	237.20	264.25	273.25	286.50	302.30	408.30
50	120.45	211.45	241.80	269.30	278.30	291.60	308.00	416.00

Commercial Plus Zone/Weight (Continued)

Maximum Weight (pounds)	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
51	122.50	215.45	246.30	274.10	283.40	296.95	312.95	422.75
52	124.60	219.15	250.75	278.95	288.85	302.45	319.60	431.80
53	126.55	223.20	255.40	283.90	294.00	307.80	325.35	439.55
54	128.80	227.15	259.85	288.65	299.20	313.20	331.10	447.40
55	131.30	232.30	264.60	293.70	304.35	318.45	336.80	455.15
56	134.60	237.45	270.35	299.95	310.95	325.30	344.30	465.25
57	136.90	241.40	274.95	304.85	316.15	330.65	350.05	473.00
58	139.20	245.15	279.45	309.65	321.50	336.10	355.85	480.85
59	141.10	249.10	284.00	314.55	326.80	341.50	361.60	488.70
60	142.95	253.05	288.60	319.40	332.00	346.80	367.40	496.60
61	144.90	257.10	293.40	324.50	337.20	352.15	373.20	504.45
62	147.15	260.90	297.80	329.20	342.35	357.35	379.10	512.45
63	149.55	264.85	302.40	334.10	347.60	362.85	384.95	520.35
64	151.50	268.75	306.90	338.85	352.90	368.20	390.75	528.20
65	154.05	272.70	311.45	343.75	358.10	373.40	396.45	535.95
66	156.85	276.75	316.15	348.75	363.30	378.85	402.20	543.70
67	158.65	280.60	320.75	353.65	368.35	383.95	408.05	551.70
68	160.70	284.55	325.30	358.35	373.80	389.55	413.95	559.75
69	163.20	288.55	329.80	363.20	378.90	394.75	419.50	567.30
70	166.15	292.45	334.45	368.05	384.15	400.05	425.35	575.20

Commercial Plus Flat Rate Envelope

	(\$)
Commercial Plus Regular Flat Rate Envelope, per piece	23.50
Commercial Plus Legal Flat Rate Envelope, per piece	23.70
Commercial Plus Padded Flat Rate Envelope, per piece	24.00

Commercial Plus Dimensional Weight

In Zones 1-9 (including local), parcels exceeding one cubic foot are priced at the actual weight or the dimensional weight, whichever is greater.

For box-shaped parcels, the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) of the parcel, and dividing by 166.

For irregular-shaped parcels (parcels not appearing box-shaped), the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) at the associated maximum cross-sections of the parcel, dividing by 166, and multiplying by an adjustment factor of 0.785.

Pickup On Demand Service

Add \$25.00 for each Pickup On Demand stop.

Sunday/Holiday Delivery

Add \$12.50 for requesting Sunday or holiday delivery.

IMpb Noncompliance Fee

Add \$0.25 for each IMpb-noncompliant parcel paying commercial prices, unless the eVS Unmanifested Fee was already assessed on that parcel.

eVS Unmanifested Fee

Add \$0.25 for each unmanifested parcel paying commercial prices, unless the IMpb Noncompliance Fee was already assessed on that parcel.

2110 Priority Mail

* * *

2110.6 Prices

Retail Priority Mail Zone/Weight

Maximum Weight (pounds)	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
1	7.95	8.35	8.50	9.25	9.55	9.85	10.65	17.60
2	8.80	9.10	10.35	11.85	12.70	14.65	15.95	27.50
3	9.30	10.15	11.35	13.55	14.25	17.95	21.15	36.55
4	9.80	11.00	12.00	14.95	18.35	21.95	24.35	42.20
5	10.85	11.75	12.75	15.40	20.75	25.05	27.95	48.70
6	11.65	12.25	13.55	17.05	23.65	27.90	31.40	54.90
7	12.65	13.85	16.25	20.45	26.15	31.10	35.20	61.60
8	13.05	15.30	18.00	24.20	29.55	34.50	39.30	68.85
9	13.55	16.50	19.95	27.50	32.05	37.15	43.65	76.55
10	14.40	17.70	21.45	29.75	34.65	40.75	47.50	83.35
11	17.05	20.70	24.90	34.10	41.10	49.30	56.75	94.40
12	18.40	22.10	26.65	37.50	44.45	53.10	60.15	101.10
13	19.40	23.25	28.05	39.45	47.50	55.10	62.80	104.60
14	20.50	24.70	29.75	41.80	49.95	58.00	65.90	109.70
15	21.20	26.00	31.35	44.05	52.00	59.30	67.50	112.75
16	21.85	27.35	33.00	46.35	54.70	62.35	71.10	118.75
17	22.80	28.70	34.65	48.55	57.35	65.50	74.65	124.90
18	23.15	29.65	36.00	50.80	60.20	68.55	78.35	131.10
19	23.80	30.35	36.75	52.15	61.30	70.00	79.90	137.15
20	24.70	30.70	37.35	52.80	62.75	72.35	83.50	143.35
21	26.50	32.05	38.85	55.70	65.75	75.50	87.35	149.70
22	27.05	32.75	39.75	56.90	67.10	77.20	89.30	153.30
23	27.65	33.35	40.35	57.75	68.25	78.65	90.80	155.85
24	28.20	34.00	41.25	58.90	69.55	80.50	92.90	159.60
25	28.50	34.50	42.80	61.35	70.35	82.35	94.35	162.15

Retail Priority Mail Zone/Weight (Continued)

Maximum Weight (pounds)	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
26	29.50	35.10	44.30	62.50	72.00	84.25	97.20	167.15
27	30.35	35.60	45.55	63.65	73.00	86.15	100.65	173.20
28	31.20	36.00	46.85	65.10	73.80	88.00	104.25	179.55
29	32.05	36.40	47.95	66.00	75.00	89.85	106.95	184.25
30	32.95	36.85	49.05	66.80	76.95	91.85	109.15	188.20
31	33.85	37.20	49.85	67.65	78.05	93.70	111.20	193.35
32	34.20	38.00	50.60	68.35	78.95	95.60	113.40	197.20
33	34.75	38.90	51.80	69.15	80.40	97.45	115.40	200.85
34	35.00	39.90	53.05	70.55	82.15	99.40	117.50	204.45
35	35.35	40.80	53.65	71.95	84.20	101.25	119.35	207.80
36	35.70	41.90	54.40	73.35	86.30	102.55	121.40	211.30
37	36.00	42.55	55.15	74.60	88.40	103.80	123.25	214.70
38	36.40	43.60	55.80	75.95	90.70	105.00	125.15	218.10
39	36.75	44.55	56.50	77.45	92.75	107.60	126.95	221.30
40	37.15	45.40	57.20	79.05	94.15	109.90	128.70	224.30
41	37.45	46.25	57.85	79.70	95.60	112.15	130.50	229.20
42	37.70	47.00	58.40	81.30	97.20	113.50	132.15	232.35
43	38.20	47.75	58.90	83.05	99.45	114.95	133.75	235.15
44	38.40	48.50	59.65	84.60	100.95	116.20	135.30	237.95
45	38.65	49.00	60.00	86.45	102.00	117.45	136.95	240.85
46	38.90	49.30	60.65	87.90	103.05	118.65	138.50	243.70
47	39.25	49.75	61.20	89.80	104.15	119.90	140.00	246.25
48	39.60	50.15	61.75	91.45	105.45	121.00	141.45	248.90
49	39.80	50.45	62.20	93.05	106.75	122.25	142.85	251.35
50	39.95	50.75	62.65	94.75	108.10	123.75	144.20	253.90

Retail Priority Mail Zone/Weight (Continued)

Maximum Weight (pounds)	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
51	40.10	51.25	63.20	96.30	109.55	125.50	145.50	258.15
52	40.60	51.55	63.60	97.00	110.65	127.25	147.15	261.30
53	41.25	51.85	63.95	97.75	111.55	129.20	149.05	264.60
54	41.70	52.05	64.40	98.50	112.30	131.10	151.05	268.20
55	42.40	52.40	64.75	99.20	113.10	133.05	153.00	271.70
56	42.95	52.75	65.10	99.80	113.90	134.85	154.40	274.20
57	43.55	52.90	65.45	100.35	114.65	136.85	155.50	276.15
58	44.20	53.15	65.90	101.00	115.30	138.65	156.65	278.15
59	44.85	53.35	66.20	101.60	115.95	139.45	157.85	280.35
60	45.40	53.55	66.80	102.05	116.50	140.20	158.80	282.15
61	46.05	53.85	67.95	102.55	117.15	141.00	160.90	286.00
62	46.50	53.95	68.75	103.10	117.70	141.65	163.45	290.40
63	47.35	54.20	69.90	103.50	118.30	142.25	165.95	295.05
64	47.80	55.80	70.85	103.95	118.75	142.95	168.35	299.40
65	48.40	55.95	71.75	104.35	119.20	143.55	171.00	304.10
66	49.00	56.15	72.90	104.80	119.70	144.05	173.30	308.35
67	49.75	56.25	74.10	105.10	120.00	144.60	175.55	312.30
68	50.30	56.35	74.95	105.35	121.50	145.15	177.40	315.65
69	50.90	56.40	75.85	105.65	122.90	145.50	179.25	318.90
70	51.50	56.60	77.05	106.00	124.40	146.00	181.15	322.25

Retail Flat Rate Envelopes¹

	(\$)
Retail Regular Flat Rate Envelope, per piece	8.70
Retail Legal Flat Rate Envelope, per piece	9.00
Retail Padded Flat Rate Envelope, per piece	9.30

Notes

1. The price for Regular, Legal, or Padded Flat Rate Envelopes also applies to sales of Regular, Legal, or Padded Flat Rate Envelopes, respectively, marked with Forever postage, at the time the envelopes are purchased.

Retail Flat Rate Boxes¹

Size	Delivery to Domestic Address (\$)	Delivery to APO/FPO/DPO Address (\$)
Small Flat Rate Box	9.20	9.20
Medium Flat Rate Boxes	16.25	16.25
Large Flat Rate Boxes	22.65	21.15

Notes

1. The price for Small, Medium, or Large Flat Rate Boxes also applies to sales of Small, Medium, or Large Flat Rate Boxes, respectively, marked with Forever postage, at the time the boxes are purchased.

Regional Rate Boxes

Size	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
A	10.38	10.59	10.89	12.06	13.94	14.68	15.69	26.42
B	10.78	11.19	12.11	15.41	20.55	23.15	25.95	46.03

Retail Dimensional Weight

In Zones 1-9 (including local), parcels exceeding one cubic foot are priced at the actual weight or the dimensional weight, whichever is greater.

For box-shaped parcels, the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) of the parcel, and dividing by 166.

For irregular-shaped parcels (parcels not appearing box-shaped), the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) at the associated maximum cross-sections of the parcel, dividing by 166, and multiplying by an adjustment factor of 0.785.

Loyalty Program

Upon the initiation of the Loyalty Program, all USPS business customers who use Click-N-Ship will be automatically enrolled in the Basic tier of the Loyalty Program, thereby earning a \$40 credit for every \$500 combined spent at Priority Mail Express Retail and Priority Mail Retail rates.

Beginning on January 1, 2021, and on every January 1 thereafter, all USPS business customers who use Click-N-Ship will be enrolled in one of the following three tiers of the Loyalty Program, based on their combined shipping spend at Priority Mail Express Retail and Priority Mail Retail rates in the previous calendar year, as follows:

- Basic (no minimum spend):
Earn \$40 credit for every \$500 spent
- Silver (at least \$10,000 spend):
Earn \$50 credit for every \$500 spent
- Gold (at least \$20,000 spend):
Qualify for Commercial Base Pricing

In the first year of the Loyalty Program, any new USPS business customer who uses Click-N-Ship will receive a one-time \$40 "Welcome Bonus" credit upon shipping at least \$500 combined at Priority Mail Express Retail and Priority Mail Retail rates.

All participants in the Loyalty Program will be eligible to receive an additional one-time \$20 credit for shipping during the first two months of the program, which will be applied once participants ship at least \$500 combined at Priority Mail Express Retail and Priority Mail Retail rates.

All credits must be redeemed within one year from the date of issuance.

Commercial Base Priority Mail Zone/Weight

Maximum Weight (pounds)	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
1	7.41	7.71	7.92	8.63	9.09	9.27	9.55	15.00
2	8.04	8.21	8.49	9.60	11.19	11.76	12.44	22.56
3	8.25	8.60	8.97	10.39	13.45	14.85	17.20	30.34
4	8.35	8.83	9.46	11.18	15.55	17.53	19.71	36.38
5	8.45	8.88	9.78	12.45	17.62	20.04	22.71	42.21
6	8.56	8.92	9.89	15.07	20.14	23.27	26.50	48.26
7	8.98	10.33	10.38	17.28	22.23	26.14	29.68	54.10
8	9.04	10.83	12.20	18.79	24.34	28.71	33.24	60.64
9	9.90	11.23	12.70	20.09	26.42	31.03	36.87	67.35
10	10.40	11.79	12.90	21.86	28.75	34.38	40.42	73.18
11	13.65	16.04	17.09	27.26	35.07	42.05	48.84	82.13
12	14.40	16.97	19.66	28.99	37.99	45.24	52.20	87.83
13	15.07	17.86	20.51	30.38	40.55	46.95	53.94	90.86
14	15.77	18.76	21.52	31.98	42.67	49.40	56.47	95.21
15	16.32	19.67	22.49	33.47	44.20	50.29	57.87	97.65
16	16.97	20.82	23.84	35.28	46.95	53.42	61.44	102.85
17	17.46	21.71	24.90	36.86	49.18	56.04	64.55	108.11
18	17.78	22.33	25.96	38.38	51.62	58.66	67.63	113.41
19	18.15	22.82	26.52	39.31	53.80	61.25	70.69	118.65
20	18.81	23.15	27.02	39.98	55.12	63.42	73.83	123.98
21	20.57	24.67	28.61	42.64	57.53	66.00	76.74	128.56
22	21.14	25.27	29.48	43.39	57.89	66.47	77.57	130.00
23	21.70	25.81	30.13	44.09	58.17	66.89	78.00	130.74
24	22.48	26.80	31.70	45.62	59.30	68.50	79.78	133.81
25	23.25	27.66	33.55	46.99	60.10	70.09	81.08	136.03

Commercial Base Priority Mail Zone/Weight (Continued)

Maximum Weight (pounds)	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
26	24.51	29.47	36.79	49.23	61.44	71.69	83.46	140.13
27	25.82	30.69	38.88	53.20	62.20	73.24	86.40	145.24
28	26.53	31.06	39.91	54.46	62.98	74.83	89.46	150.50
29	27.27	31.35	40.92	55.12	63.95	76.43	91.74	154.39
30	28.00	31.77	41.82	55.80	65.60	78.00	93.59	157.63
31	28.72	32.06	42.44	56.45	66.48	79.61	95.41	162.00
32	29.02	32.69	43.10	57.05	67.28	81.22	97.26	165.20
33	29.43	33.52	44.11	57.74	68.49	82.79	98.95	168.16
34	29.68	34.33	45.17	58.88	70.00	84.39	100.71	171.25
35	29.98	35.08	45.78	60.02	71.74	85.98	102.36	174.08
36	30.32	36.03	46.35	61.21	73.42	87.08	104.01	176.96
37	30.61	36.65	46.98	62.21	75.21	88.13	105.64	179.80
38	30.89	37.48	47.54	63.35	77.16	89.08	107.23	182.59
39	31.16	38.30	48.06	64.56	78.87	91.30	108.82	185.34
40	31.46	39.05	48.65	65.80	80.05	93.23	110.24	187.78
41	31.77	39.66	49.14	66.34	81.32	95.11	111.76	191.89
42	31.99	39.94	49.55	67.37	82.66	96.34	113.22	194.44
43	32.33	40.22	49.97	68.40	84.52	97.48	114.60	196.86
44	32.54	40.49	50.38	69.42	85.78	98.58	115.84	199.08
45	32.73	40.76	50.81	70.46	86.68	99.59	117.24	201.53
46	33.00	41.04	51.23	71.49	87.59	100.61	118.60	203.86
47	33.22	41.31	51.64	72.52	88.45	101.70	119.85	206.09
48	33.48	41.59	52.06	73.54	89.52	102.63	121.07	208.28
49	33.72	41.85	52.48	74.57	90.68	103.65	122.25	210.26
50	33.85	42.12	52.90	75.61	91.88	104.90	123.48	212.46

Commercial Base Priority Mail Zone/Weight (Continued)

Maximum Weight (pounds)	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
51	34.31	42.40	53.29	76.81	93.07	106.33	124.58	216.06
52	34.78	42.68	53.71	77.32	93.92	107.86	126.00	218.53
53	35.38	42.94	54.13	77.91	94.67	109.54	127.54	221.26
54	35.86	43.23	54.54	78.54	95.31	111.04	129.26	224.29
55	36.38	43.49	54.96	79.00	96.06	112.72	130.93	227.24
56	36.85	43.77	55.38	79.56	96.66	114.24	132.22	229.54
57	37.39	44.04	55.80	80.00	97.36	115.90	133.34	231.55
58	37.92	44.31	56.21	80.48	97.91	117.37	134.40	233.38
59	38.43	44.59	56.62	80.94	98.43	118.14	135.35	235.09
60	38.88	44.86	57.03	81.36	98.90	118.80	136.29	236.70
61	39.47	45.12	57.45	81.74	99.42	119.46	138.05	239.85
62	39.92	45.40	57.86	82.08	99.86	119.96	140.17	243.55
63	40.60	45.68	58.29	82.49	100.40	120.51	142.34	247.38
64	40.93	45.94	58.70	82.83	100.83	121.04	144.44	251.11
65	41.49	46.22	59.13	83.07	101.11	121.62	146.61	254.96
66	42.00	46.50	59.53	83.42	101.59	121.97	148.67	258.59
67	42.59	46.77	60.50	83.70	101.90	122.44	150.59	261.93
68	43.06	47.04	61.23	83.92	103.12	123.05	152.13	264.65
69	43.61	47.32	61.98	84.15	104.30	123.60	153.68	267.43
70	44.04	47.59	62.92	84.40	105.50	124.03	155.28	270.24

Commercial Base Flat Rate Envelope

	(\$)
Commercial Base Regular Flat Rate Envelope, per piece	8.15
Commercial Base Legal Flat Rate Envelope, per piece	8.45
Commercial Base Padded Flat Rate Envelope, per piece	8.75

Commercial Base Flat Rate Box

Size	Delivery to Domestic Address (\$)	Delivery to APO/FPO/DPO Address (\$)
Small Flat Rate Box	8.65	8.65
Regular Flat Rate Boxes	14.50	14.50
Large Flat Rate Boxes	20.05	18.55

Commercial Base Regional Rate Boxes

Size	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
A	8.08	8.29	8.59	9.76	11.64	12.38	13.39	24.12
B	8.48	8.89	9.81	13.11	18.25	20.85	23.65	43.73

Commercial Base Dimensional Weight

In Zones 1-9 (including local), parcels exceeding one cubic foot are priced at the actual weight or the dimensional weight, whichever is greater.

For box-shaped parcels, the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) of the parcel, and dividing by 166.

For irregular-shaped parcels (parcels not appearing box-shaped), the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) at the associated maximum cross-sections of the parcel, dividing by 166, and multiplying by an adjustment factor of 0.785.

Commercial Plus Priority Mail Zone/Weight

Maximum Weight (pounds)	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
0.5	7.41	7.71	7.92	8.63	9.09	9.27	9.55	15.00
1	7.41	7.71	7.92	8.63	9.09	9.27	9.55	15.00
2	8.04	8.21	8.49	9.60	11.19	11.76	12.44	22.56
3	8.25	8.60	8.97	10.39	13.45	14.85	17.20	30.34
4	8.35	8.83	9.46	11.18	15.55	17.53	19.71	36.38
5	8.45	8.88	9.78	12.45	17.62	20.04	22.71	42.21
6	8.56	8.92	9.89	15.07	20.14	23.27	26.50	48.26
7	8.98	10.33	10.38	17.28	22.23	26.14	29.68	54.10
8	9.04	10.83	12.20	18.79	24.34	28.71	33.24	60.64
9	9.90	11.23	12.70	20.09	26.42	31.03	36.87	67.35
10	10.40	11.79	12.90	21.86	28.75	34.38	40.42	73.18
11	13.65	16.04	17.09	27.26	35.07	42.05	48.84	82.13
12	14.40	16.97	19.66	28.99	37.99	45.24	52.20	87.83
13	15.07	17.86	20.51	30.38	40.55	46.95	53.94	90.86
14	15.77	18.76	21.52	31.98	42.67	49.40	56.47	95.21
15	16.32	19.67	22.49	33.47	44.20	50.29	57.87	97.65
16	16.97	20.82	23.84	35.28	46.95	53.42	61.44	102.85
17	17.46	21.71	24.90	36.86	49.18	56.04	64.55	108.11
18	17.78	22.33	25.96	38.38	51.62	58.66	67.63	113.41
19	18.15	22.82	26.52	39.31	53.80	61.25	70.69	118.65
20	18.81	23.15	27.02	39.98	55.12	63.42	73.83	123.98
21	20.57	24.67	28.61	42.64	57.53	66.00	76.74	128.56
22	21.14	25.27	29.48	43.39	57.89	66.47	77.57	130.00
23	21.70	25.81	30.13	44.09	58.17	66.89	78.00	130.74
24	22.48	26.80	31.70	45.62	59.30	68.50	79.78	133.81
25	23.25	27.66	33.55	46.99	60.10	70.09	81.08	136.03

Commercial Plus Priority Mail Zone/Weight (Continued)

Maximum Weight (pounds)	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
26	24.51	29.47	36.79	49.23	61.44	71.69	83.46	140.13
27	25.82	30.69	38.88	53.20	62.20	73.24	86.40	145.24
28	26.53	31.06	39.91	54.46	62.98	74.83	89.46	150.50
29	27.27	31.35	40.92	55.12	63.95	76.43	91.74	154.39
30	28.00	31.77	41.82	55.80	65.60	78.00	93.59	157.63
31	28.72	32.06	42.44	56.45	66.48	79.61	95.41	162.00
32	29.02	32.69	43.10	57.05	67.28	81.22	97.26	165.20
33	29.43	33.52	44.11	57.74	68.49	82.79	98.95	168.16
34	29.68	34.33	45.17	58.88	70.00	84.39	100.71	171.25
35	29.98	35.08	45.78	60.02	71.74	85.98	102.36	174.08
36	30.32	36.03	46.35	61.21	73.42	87.08	104.01	176.96
37	30.61	36.65	46.98	62.21	75.21	88.13	105.64	179.80
38	30.89	37.48	47.54	63.35	77.16	89.08	107.23	182.59
39	31.16	38.30	48.06	64.56	78.87	91.30	108.82	185.34
40	31.46	39.05	48.65	65.80	80.05	93.23	110.24	187.78
41	31.77	39.66	49.14	66.34	81.32	95.11	111.76	191.89
42	31.99	39.94	49.55	67.37	82.66	96.34	113.22	194.44
43	32.33	40.22	49.97	68.40	84.52	97.48	114.60	196.86
44	32.54	40.49	50.38	69.42	85.78	98.58	115.84	199.08
45	32.73	40.76	50.81	70.46	86.68	99.59	117.24	201.53
46	33.00	41.04	51.23	71.49	87.59	100.61	118.60	203.86
47	33.22	41.31	51.64	72.52	88.45	101.70	119.85	206.09
48	33.48	41.59	52.06	73.54	89.52	102.63	121.07	208.28
49	33.72	41.85	52.48	74.57	90.68	103.65	122.25	210.26
50	33.85	42.12	52.90	75.61	91.88	104.90	123.48	212.46

Commercial Plus Priority Mail Zone/Weight (Continued)

Maximum Weight (pounds)	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
51	34.31	42.40	53.29	76.81	93.07	106.33	124.58	216.06
52	34.78	42.68	53.71	77.32	93.92	107.86	126.00	218.53
53	35.38	42.94	54.13	77.91	94.67	109.54	127.54	221.26
54	35.86	43.23	54.54	78.54	95.31	111.04	129.26	224.29
55	36.38	43.49	54.96	79.00	96.06	112.72	130.93	227.24
56	36.85	43.77	55.38	79.56	96.66	114.24	132.22	229.54
57	37.39	44.04	55.80	80.00	97.36	115.90	133.34	231.55
58	37.92	44.31	56.21	80.48	97.91	117.37	134.40	233.38
59	38.43	44.59	56.62	80.94	98.43	118.14	135.35	235.09
60	38.88	44.86	57.03	81.36	98.90	118.80	136.29	236.70
61	39.47	45.12	57.45	81.74	99.42	119.46	138.05	239.85
62	39.92	45.40	57.86	82.08	99.86	119.96	140.17	243.55
63	40.60	45.68	58.29	82.49	100.40	120.51	142.34	247.38
64	40.93	45.94	58.70	82.83	100.83	121.04	144.44	251.11
65	41.49	46.22	59.13	83.07	101.11	121.62	146.61	254.96
66	42.00	46.50	59.53	83.42	101.59	121.97	148.67	258.59
67	42.59	46.77	60.50	83.70	101.90	122.44	150.59	261.93
68	43.06	47.04	61.23	83.92	103.12	123.05	152.13	264.65
69	43.61	47.32	61.98	84.15	104.30	123.60	153.68	267.43
70	44.04	47.59	62.92	84.40	105.50	124.03	155.28	270.24

Commercial Plus Flat Rate Envelope

	(\$)
Commercial Plus Regular Flat Rate Envelope, per piece	8.15
Commercial Plus Legal Flat Rate Envelope, per piece	8.45
Commercial Plus Padded Flat Rate Envelope, per piece	8.75

Commercial Plus Flat Rate Box

Size	Delivery to Domestic Address (\$)	Delivery to APO/FPO/DPO Address (\$)
Small Flat Rate Box	8.65	8.65
Medium Flat Rate Boxes	14.50	14.50
Large Flat Rate Boxes	20.05	18.55

Commercial Plus Regional Rate Boxes

Maximum Cubic Feet	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
A	8.08	8.29	8.59	9.76	11.64	12.38	13.39	24.12
B	8.48	8.89	9.81	13.11	18.25	20.85	23.65	43.73

Commercial Plus Dimensional Weight

In Zones 1-9 (including local), parcels exceeding one cubic foot are priced at the actual weight or the dimensional weight, whichever is greater.

For box-shaped parcels, the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) of the parcel, and dividing by 166.

For irregular-shaped parcels (parcels not appearing box-shaped), the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) at the associated maximum cross-sections of the parcel, dividing by 166, and multiplying by an adjustment factor of 0.785.

Commercial Plus Cubic

Maximum Cubic Feet	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
0.10	7.57	7.84	8.06	8.87	9.62	9.89	10.27	16.89
0.20	8.39	8.71	8.96	9.75	10.43	10.68	11.06	17.84
0.30	9.02	9.21	9.53	10.72	12.54	13.20	14.00	25.44
0.40	9.18	9.52	9.91	11.35	14.33	15.64	17.76	31.59
0.50	9.33	9.83	10.47	12.25	16.77	18.83	21.33	39.03

Open and Distribute (PMOD)

a. DDU

Container	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
Half Tray	9.09	11.07	13.33	21.79	22.07	23.93	26.48	32.92
Full Tray	12.27	15.28	17.75	31.38	35.95	38.16	42.49	52.92
EMM Tray	14.03	16.67	20.53	34.63	37.95	41.59	46.17	57.52
Flat Tub	19.94	24.93	30.76	52.35	63.04	68.09	75.71	94.44

b. Processing Facilities

Container	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
Half Tray	7.41	9.12	11.15	19.75	20.17	21.99	23.55	29.26
Full Tray	9.31	11.94	14.80	27.29	32.12	34.33	38.28	47.67
EMM Tray	11.06	12.78	17.32	30.05	34.03	37.39	43.09	53.69
Flat Tub	15.72	20.70	26.16	48.06	58.54	63.65	69.94	87.25

Pickup On Demand Service

Add \$25.00 for each Pickup On Demand stop.

IMpb Noncompliance Fee

Add \$0.25 for each IMpb-noncompliant parcel paying commercial prices, unless the eVS Unmanifested Fee was already assessed on that parcel.

eVS Unmanifested Fee

Add \$0.25 for each unmanifested parcel paying commercial prices, unless the IMpb Noncompliance Fee was already assessed on that parcel.

2115 Parcel Select

* * *

2115.6 Prices

Destination Entered — DDU

a. DDU

Maximum Weight (pounds)	DDU (\$)
1	3.30
2	3.42
3	3.54
4	3.66
5	3.78
6	3.90
7	4.02
8	4.14
9	4.27
10	4.40
11	4.53
12	4.66
13	4.79
14	4.92
15	5.05
16	5.18
17	5.31
18	5.44
19	5.57
20	5.70
21	6.21
22	6.30
23	6.36
24	6.40
25	6.44

a. DDU (Continued)

Maximum Weight (pounds)	DDU (\$)
26	6.48
27	6.52
28	6.56
29	6.60
30	6.64
31	6.68
32	6.72
33	6.76
34	6.80
35	6.84
36	7.04
37	7.08
38	7.12
39	7.16
40	7.20
41	7.24
42	7.28
43	7.32
44	7.36
45	7.40
46	7.44
47	7.49
48	7.54
49	7.60
50	7.66

a. DDU (Continued)

Maximum Weight (pounds)	DDU (\$)
51	7.73
52	7.80
53	7.88
54	7.96
55	8.04
56	8.12
57	8.20
58	8.28
59	8.36
60	8.44
61	8.52
62	8.60
63	8.68
64	8.76
65	8.84
66	8.92
67	9.00
68	9.08
69	9.16
70	9.24
Oversized	13.97

b. Dimensional Weight

Parcels exceeding one cubic foot are priced at the actual weight or the dimensional weight, whichever is greater.

For box-shaped parcels, the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) of the parcel, and dividing by 166.

For irregular-shaped parcels (parcels not appearing box-shaped), the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) at the associated maximum cross-sections of the parcel, dividing by 166, and multiplying by an adjustment factor of 0.785.

c. Oversized Pieces

Regardless of weight, any piece that measures more than 108 inches (but not more than 130 inches) in length plus girth must pay the oversized price. As stated in the Domestic Mail Manual, any piece that is found to be over the 70 pound maximum weight limitation is nonmailable, will not be delivered, and may be subject to the \$100.00 overweight item charge.

d. Forwarding and Returns

Parcel Select pieces that are forwarded on request of the addressee or forwarded or returned on request of the mailer will be subject to the applicable Parcel Select Ground price, plus \$3.00, when forwarded or returned. For customers using Address Correction Service with Shipper Paid Forwarding/Return, and also using an IMpb, the additional fee will be \$2.50.

Destination Entered — DSCF

a. DSCF — 5-Digit Machinable

Maximum Weight (pounds)	DSCF 5-Digit (\$)
1	5.84
2	6.02
3	6.20
4	6.38
5	6.56
6	6.74
7	6.93
8	7.12
9	7.31
10	7.50
11	7.69
12	7.87
13	8.06
14	8.25
15	8.44
16	8.63
17	8.82
18	9.01
19	9.20
20	9.39
21	9.58
22	9.77
23	9.96
24	10.15
25	10.34

a. DSCF — 5-Digit Machinable (Continued)

Maximum Weight (pounds)	DSCF 5-Digit (\$)
26	10.53
27	10.72
28	10.91
29	11.10
30	11.29
31	11.48
32	11.67
33	11.86
34	12.05
35	12.24

b. DSCF — 3-Digit, 5-Digit Non-Machinable

Maximum Weight (pounds)	DSCF 3-Digit (\$)	DSCF 5-Digit (\$)
1	8.49	5.84
2	8.67	6.02
3	8.85	6.20
4	9.03	6.38
5	9.21	6.56
6	9.39	6.74
7	9.58	6.93
8	9.77	7.12
9	9.96	7.31
10	10.15	7.50
11	10.34	7.69
12	10.52	7.87
13	10.71	8.06
14	10.90	8.25
15	11.09	8.44
16	11.28	8.63
17	11.47	8.82
18	11.66	9.01
19	11.85	9.20
20	12.04	9.39
21	12.23	9.58
22	12.42	9.77
23	12.61	9.96
24	12.80	10.15
25	12.99	10.34

b. DSCF — 3-Digit, 5-Digit Non-Machinable (Continued)

Maximum Weight (pounds)	DSCF 3-Digit (\$)	DSCF 5-Digit (\$)
26	13.18	10.53
27	13.37	10.72
28	13.56	10.91
29	13.75	11.10
30	13.94	11.29
31	14.13	11.48
32	14.32	11.67
33	14.51	11.86
34	14.70	12.05
35	14.89	12.24
36	15.20	12.55
37	15.39	12.74
38	15.58	12.93
39	15.77	13.12
40	15.96	13.31
41	16.15	13.50
42	16.34	13.69
43	16.53	13.88
44	16.72	14.07
45	16.91	14.26
46	17.10	14.45
47	17.29	14.64
48	17.48	14.83
49	17.67	15.02
50	17.86	15.21

b. DSCF — 3-Digit, 5-Digit Non-Machinable (Continued)

Maximum Weight (pounds)	DSCF 3-Digit (\$)	DSCF 5-Digit (\$)
51	18.05	15.40
52	18.24	15.59
53	18.43	15.78
54	18.62	15.97
55	18.81	16.16
56	19.00	16.35
57	19.19	16.54
58	19.38	16.73
59	19.57	16.92
60	19.76	17.11
61	19.95	17.30
62	20.14	17.49
63	20.33	17.68
64	20.52	17.87
65	20.71	18.06
66	20.90	18.25
67	21.09	18.44
68	21.28	18.63
69	21.47	18.82
70	21.66	19.01
Oversized	28.90	28.90

c. Dimensional Weight

Parcels exceeding one cubic foot are priced at the actual weight or the dimensional weight, whichever is greater.

For box-shaped parcels, the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) of the parcel, and dividing by 166.

For irregular-shaped parcels (parcels not appearing box-shaped), the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) at the associated maximum cross-sections of the parcel, dividing by 166, and multiplying by an adjustment factor of 0.785.

d. Oversized Pieces

Regardless of weight, any piece that measures more than 108 inches (but not more than 130 inches) in length plus girth must pay the oversized price. As stated in the Domestic Mail Manual, any piece that is found to be over the 70 pound maximum weight limitation is nonmailable, will not be delivered, and may be subject to the \$100.00 overweight item charge.

e. Forwarding and Returns

Parcel Select pieces that are forwarded on request of the addressee or forwarded or returned on request of the mailer will be subject to the applicable Parcel Select Ground price, plus \$3.00, when forwarded or returned. For customers using Address Correction Service with Shipper Paid Forwarding/Return, and also using an IMpb, the additional fee will be \$2.50.

Destination Entered — DNDC

a. DNDC — Machinable

Maximum Weight (pounds)	DNDC Zones 1 & 2 (\$)	DNDC Zone 3 (\$)	DNDC Zone 4 (\$)	DNDC Zones 5 (\$)
1	7.85	8.66	9.63	11.00
2	8.04	9.05	10.17	11.59
3	8.23	9.45	10.72	12.21
4	8.42	9.86	11.29	12.88
5	8.61	10.27	11.86	13.56
6	8.82	10.68	12.42	14.24
7	9.05	11.09	12.97	14.92
8	9.30	11.53	13.53	15.60
9	9.57	12.01	14.12	16.26
10	9.86	12.49	14.71	16.93
11	10.15	12.97	15.30	17.60
12	10.44	13.45	15.89	18.27
13	10.73	13.93	16.47	18.94
14	11.02	14.41	17.05	19.61
15	11.31	14.89	17.63	20.27
16	11.60	15.37	18.18	20.93
17	11.89	15.85	18.69	21.57
18	12.18	16.33	19.18	22.19
19	12.47	16.81	19.65	22.78
20	12.76	17.29	20.11	23.33
21	13.05	17.77	20.57	23.88
22	13.34	18.25	21.02	24.43
23	13.63	18.73	21.47	24.97
24	13.92	19.21	21.92	25.51
25	14.21	19.67	22.37	26.05

a. DNDC — Machinable (Continued)

Maximum Weight (pounds)	DNDC Zones 1 & 2 (\$)	DNDC Zone 3 (\$)	DNDC Zone 4 (\$)	DNDC Zones 5 (\$)
26	14.50	20.10	22.82	26.59
27	14.79	20.51	23.26	27.11
28	15.08	20.89	23.69	27.63
29	15.37	21.27	24.10	28.08
30	15.66	21.65	24.50	28.50
31	15.95	22.03	24.90	28.92
32	16.24	22.41	25.30	29.33
33	16.53	22.79	25.70	29.74
34	16.82	23.17	26.09	30.15
35	17.11	23.55	26.47	30.56

b. DNDC — Non-Machinable

Maximum Weight (pounds)	DNDC Zones 1 & 2 (\$)	DNDC Zone 3 (\$)	DNDC Zone 4 (\$)	DNDC Zones 5 (\$)
1	10.85	11.66	12.63	14.00
2	11.04	12.05	13.17	14.59
3	11.23	12.45	13.72	15.21
4	11.42	12.86	14.29	15.88
5	11.61	13.27	14.86	16.56
6	11.82	13.68	15.42	17.24
7	12.05	14.09	15.97	17.92
8	12.30	14.53	16.53	18.60
9	12.57	15.01	17.12	19.26
10	12.86	15.49	17.71	19.93
11	13.15	15.97	18.30	20.60
12	13.44	16.45	18.89	21.27
13	13.73	16.93	19.47	21.94
14	14.02	17.41	20.05	22.61
15	14.31	17.89	20.63	23.27
16	14.60	18.37	21.18	23.93
17	14.89	18.85	21.69	24.57
18	15.18	19.33	22.18	25.19
19	15.47	19.81	22.65	25.78
20	15.76	20.29	23.11	26.33
21	16.05	20.77	23.57	26.88
22	16.34	21.25	24.02	27.43
23	16.63	21.73	24.47	27.97
24	16.92	22.21	24.92	28.51
25	17.21	22.67	25.37	29.05

b. DNDC — Non-Machinable (Continued)

Maximum Weight (pounds)	DNDC Zones 1 & 2 (\$)	DNDC Zone 3 (\$)	DNDC Zone 4 (\$)	DNDC Zones 5 (\$)
26	17.50	23.10	25.82	29.59
27	17.79	23.51	26.26	30.11
28	18.08	23.89	26.69	30.63
29	18.37	24.27	27.10	31.08
30	18.66	24.65	27.50	31.50
31	18.95	25.03	27.90	31.92
32	19.24	25.41	28.30	32.33
33	19.53	25.79	28.70	32.74
34	19.82	26.17	29.09	33.15
35	20.11	26.55	29.47	33.56
36	20.59	27.11	29.94	34.08
37	20.93	27.50	30.35	34.48
38	21.26	27.88	30.75	34.89
39	21.58	28.26	31.15	35.29
40	21.89	28.62	31.54	35.67
41	22.19	28.97	31.89	36.05
42	22.48	29.32	32.25	36.43
43	22.78	29.67	32.61	36.81
44	23.08	30.03	32.98	37.19
45	23.38	30.37	33.34	37.57
46	23.68	30.72	33.70	37.95
47	23.98	31.08	34.07	38.33
48	24.27	31.42	34.42	38.71
49	24.56	31.77	34.77	39.08
50	24.85	32.10	35.12	39.45

b. DNDC — Non-Machinable (Continued)

Maximum Weight (pounds)	DNDC Zones 1 & 2 (\$)	DNDC Zone 3 (\$)	DNDC Zone 4 (\$)	DNDC Zones 5 (\$)
51	25.13	32.44	35.47	39.82
52	25.42	32.78	35.81	40.19
53	25.70	33.12	36.15	40.55
54	25.98	33.45	36.48	40.90
55	26.26	33.77	36.82	41.25
56	26.54	34.08	37.15	41.60
57	26.82	34.40	37.49	41.95
58	27.10	34.70	37.82	42.30
59	27.38	35.02	38.16	42.65
60	27.66	35.33	38.50	43.00
61	27.95	35.65	38.84	43.35
62	28.23	35.97	39.18	43.70
63	28.52	36.28	39.52	44.05
64	28.80	36.60	39.85	44.40
65	29.09	36.92	40.19	44.75
66	29.37	37.24	40.52	45.10
67	29.66	37.56	40.86	45.44
68	29.94	37.88	41.19	45.78
69	30.23	38.20	41.53	46.12
70	30.51	38.52	41.86	46.46
Oversized	44.71	59.44	70.65	81.44

c. Dimensional Weight

Parcels exceeding one cubic foot are priced at the actual weight or the dimensional weight, whichever is greater.

For box-shaped parcels, the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) of the parcel, and dividing by 166.

For irregular-shaped parcels (parcels not appearing box-shaped), the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) at the associated maximum cross-sections of the parcel, dividing by 166, and multiplying by an adjustment factor of 0.785.

d. Oversized Pieces

Regardless of weight, any piece that measures more than 108 inches (but not more than 130 inches) in length plus girth must pay the oversized price. As stated in the Domestic Mail Manual, any piece that is found to be over the 70 pound maximum weight limitation is nonmailable, will not be delivered, and may be subject to the \$100.00 overweight item charge.

e. Forwarding and Returns

Parcel Select pieces that are forwarded on request of the addressee or forwarded or returned on request of the mailer will be subject to the applicable Parcel Select Ground price, plus \$3.00, when forwarded or returned. For customers using Address Correction Service with Shipper Paid Forwarding/Return, and also using an IMpb, the additional fee will be \$2.50.

Non-Destination Entered — Parcel Select Ground

a. Parcel Select Ground

Maximum Weight (pounds)	Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)
1	7.26	7.56	7.77	8.38	8.59	8.72	8.90
2	7.84	8.01	8.29	9.30	10.54	11.01	11.54
3	8.00	8.35	8.72	10.04	12.55	13.75	15.80
4	8.10	8.58	9.21	10.83	14.65	16.43	18.31
5	8.20	8.63	9.53	12.10	16.72	18.94	21.31
6	8.31	8.67	9.64	14.72	19.24	22.17	25.10
7	8.58	9.93	9.98	16.78	21.08	24.59	27.83
8	8.64	10.43	11.80	18.29	23.19	27.16	31.39
9	9.50	10.83	12.30	19.59	25.27	29.48	35.02
10	9.90	11.29	12.40	21.21	27.30	32.38	38.02
11	13.15	15.54	16.59	26.61	33.62	40.05	45.80
12	13.90	16.47	19.16	28.34	36.54	43.10	49.10
13	14.57	17.36	20.01	29.73	38.55	44.25	49.95
14	15.27	18.26	21.02	31.33	40.60	46.50	52.40
15	15.82	19.17	21.99	32.82	42.40	48.10	53.80
16	16.47	20.32	23.34	34.63	44.65	50.65	56.85
17	16.96	21.21	24.40	36.21	46.95	53.25	59.75
18	17.28	21.83	25.46	37.73	49.20	55.90	62.80
19	17.65	22.32	26.02	38.66	50.25	57.00	63.95
20	18.31	22.65	26.52	39.33	51.90	59.40	67.10
21	20.07	24.17	28.11	41.99	54.75	62.50	70.55
22	20.64	24.77	28.98	42.74	55.95	64.00	72.15
23	21.20	25.31	29.63	43.44	56.72	64.89	73.35
24	21.98	26.30	31.20	44.97	57.85	66.50	75.15
25	22.75	27.16	33.05	46.34	58.65	67.80	76.45

a. Parcel Select Ground (Continued)

Maximum Weight (pounds)	Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)
26	24.01	28.97	36.29	48.58	59.99	69.60	78.70
27	25.32	30.19	38.38	52.55	60.75	71.24	81.45
28	26.03	30.56	39.41	53.81	61.53	72.83	84.50
29	26.77	30.85	40.42	54.47	62.50	74.43	86.75
30	27.50	31.27	41.32	55.15	64.15	76.00	88.50
31	28.22	31.56	41.94	55.80	65.03	77.61	90.45
32	28.52	32.19	42.60	56.40	65.83	79.22	92.00
33	28.93	33.02	43.61	57.09	67.04	80.79	93.80
34	29.18	33.83	44.67	58.23	68.55	82.39	95.55
35	29.48	34.58	45.28	59.37	70.29	83.98	96.95
36	29.82	35.53	45.85	60.56	71.97	85.08	98.60
37	30.11	36.15	46.48	61.56	73.76	86.13	100.20
38	30.39	36.98	47.04	62.70	75.71	87.08	101.80
39	30.66	37.80	47.56	63.91	77.42	89.30	103.30
40	30.96	38.55	48.15	65.15	78.60	91.23	104.70
41	31.27	39.16	48.64	65.69	79.87	93.11	106.30
42	31.49	39.44	49.05	66.72	81.21	94.34	107.60
43	31.83	39.72	49.47	67.75	83.07	95.48	108.70
44	32.04	39.99	49.88	68.77	84.33	96.58	110.20
45	32.23	40.26	50.31	69.81	85.23	97.59	111.50
46	32.50	40.54	50.73	70.84	86.14	98.61	112.75
47	32.72	40.81	51.14	71.87	87.00	99.70	114.05
48	32.98	41.09	51.56	72.89	88.07	100.63	115.15
49	33.22	41.35	51.98	73.92	89.23	101.65	116.25
50	33.35	41.62	52.40	74.96	90.43	102.90	117.45

a. Parcel Select Ground (Continued)

Maximum Weight (pounds)	Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)
51	33.81	41.90	52.79	76.16	91.62	104.33	118.55
52	34.28	42.18	53.21	76.67	92.47	105.86	119.85
53	34.88	42.44	53.63	77.26	93.22	107.54	121.35
54	35.36	42.73	54.04	77.89	93.86	109.04	123.05
55	35.88	42.99	54.46	78.35	94.61	110.72	124.60
56	36.35	43.27	54.88	78.91	95.21	112.20	125.85
57	36.89	43.54	55.30	79.35	95.91	112.90	126.70
58	37.42	43.81	55.71	79.83	96.46	113.90	127.75
59	37.93	44.09	56.12	80.29	96.98	114.60	128.65
60	38.38	44.36	56.53	80.71	97.45	115.30	129.45
61	38.97	44.62	56.95	81.09	97.97	116.60	131.20
62	39.42	44.90	57.36	81.43	98.41	117.96	133.30
63	40.10	45.18	57.79	81.84	98.95	118.51	135.40
64	40.43	45.44	58.20	82.18	99.38	119.04	137.45
65	40.99	45.72	58.63	82.42	99.66	119.62	139.45
66	41.50	46.00	59.03	82.77	100.14	119.97	141.60
67	42.09	46.27	60.00	83.05	100.45	120.44	143.35
68	42.56	46.54	60.73	83.27	101.67	121.05	144.85
69	43.11	46.82	61.48	83.50	102.85	121.60	146.35
70	43.54	47.09	62.42	83.75	104.05	122.03	147.95
Oversized	82.50	104.20	125.95	149.90	171.60	193.25	215.00

b. Dimensional Weight

Parcels exceeding one cubic foot are priced at the actual weight or the dimensional weight, whichever is greater.

For box-shaped parcels, the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) of the parcel, and dividing by 166.

For irregular-shaped parcels (parcels not appearing box-shaped), the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) at the associated maximum cross-sections of the parcel, dividing by 166, and multiplying by an adjustment factor of 0.785.

c. Oversized Pieces

Regardless of weight, any piece that measures more than 108 inches (but not more than 130 inches) in length plus girth must pay the oversized price. As stated in the Domestic Mail Manual, any piece that is found to be over the 70 pound maximum weight limitation is nonmailable, will not be delivered, and may be subject to the \$100.00 overweight item charge.

d. Forwarding and Returns

Parcel Select pieces that are forwarded on request of the addressee or forwarded or returned on request of the mailer will be subject to the applicable Parcel Select Ground price, plus \$3.00, when forwarded or returned. For customers using Address Correction Service with Shipper Paid Forwarding/Return, and also using an IMpb, the additional fee will be \$2.50.

Parcel Select Lightweight

Maximum Weight (ounces)	Entry Point/Sortation Level							
	DDU/ 5-Digit (\$)	DSCF/ 5-Digit (\$)	DNDC/ 5-Digit (\$)	DSCF/ SCF (\$)	DNDC/ SCF (\$)	DNDC/ NDC (\$)	None/ NDC (\$)	None/ Mixed NDC/Single -Piece -Piece (\$)
1	2.15	3.55	3.85	4.05	4.28	4.70	5.13	5.45
2	2.15	3.55	3.85	4.05	4.28	4.70	5.13	5.45
3	2.15	3.55	3.85	4.05	4.28	4.70	5.13	5.45
4	2.15	3.55	3.85	4.05	4.28	4.70	5.13	5.45
5	2.17	3.60	3.95	4.16	4.50	4.93	5.43	5.80
6	2.17	3.60	3.95	4.16	4.50	4.93	5.43	5.80
7	2.17	3.60	3.95	4.16	4.50	4.93	5.43	5.80
8	2.17	3.60	3.95	4.16	4.50	4.93	5.43	5.80
9	2.32	3.84	4.28	4.51	4.95	5.43	6.00	6.43
10	2.32	3.84	4.28	4.51	4.95	5.43	6.00	6.43
11	2.32	3.84	4.28	4.51	4.95	5.43	6.00	6.43
12	2.32	3.84	4.28	4.51	4.95	5.43	6.00	6.43
13	2.49	4.10	4.63	5.01	5.43	5.97	6.61	7.10
14	2.49	4.10	4.63	5.01	5.43	5.97	6.61	7.10
15	2.49	4.10	4.63	5.01	5.43	5.97	6.61	7.10
15.999	2.49	4.10	4.63	5.01	5.43	5.97	6.61	7.10

Forwarding and Return Service

If Forwarding Service is used in conjunction with electronic Address Correction Service, forwarded Parcel Select Lightweight parcels pay \$4.75 per piece. All other Parcel Select Lightweight pieces requesting Forwarding and Return Service that are returned are charged the appropriate First-Class Package Service or Priority Mail price for the piece multiplied by a factor of 2.472.

Pickup On Demand Service

Add \$25.00 for each Pickup On Demand stop.

IMpb Noncompliance Fee

Add \$0.25 for each IMpb-noncompliant parcel paying commercial prices, unless the eVS Unmanifested Fee was already assessed on that parcel.

eVS Unmanifested Fee

Add \$0.25 for each unmanifested parcel paying commercial prices, unless the IMpb Noncompliance Fee was already assessed on that parcel.

2120 Parcel Return Service

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2120.6 Prices

RSCF Entered

a. Machinable RSCF

Maximum Weight (pounds)	RSCF (\$)
1	5.02
2	5.55
3	5.88
4	6.25
5	6.65
6	7.20
7	7.63
8	8.19
9	8.68
10	9.21
11	9.69
12	10.30
13	10.72
14	11.06
15	11.42
16	11.77
17	12.17
18	12.48
19	12.78
20	13.18
21	13.50
22	13.87
23	14.13
24	14.53
25	14.82

a. Machinable RSCF (Continued)

Maximum Weight (pounds)	RSCF (\$)
26	15.26
27	15.56
28	15.87
29	16.19
30	16.47
31	16.81
32	17.12
33	17.39
34	17.81
35	18.11

b. Nonmachinable RSCF

Maximum Weight (pounds)	RSCF (\$)
1	8.02
2	8.55
3	8.88
4	9.25
5	9.65
6	10.20
7	10.63
8	11.19
9	11.68
10	12.21
11	12.69
12	13.30
13	13.72
14	14.06
15	14.42
16	14.77
17	15.17
18	15.48
19	15.78
20	16.18
21	16.50
22	16.87
23	17.13
24	17.53
25	17.82

b. Nonmachinable RSCF (Continued)

Maximum Weight (pounds)	RSCF (\$)
26	18.26
27	18.56
28	18.87
29	19.19
30	19.47
31	19.81
32	20.12
33	20.39
34	20.81
35	21.11
36	21.43
37	21.54
38	21.85
39	22.00
40	22.28
41	22.55
42	22.70
43	23.02
44	23.29
45	23.57
46	23.83
47	24.03
48	24.42
49	24.77
50	24.99

b. Nonmachinable RSCF (Continued)

Maximum Weight (pounds)	RSCF (\$)
51	25.38
52	25.65
53	26.05
54	26.39
55	26.61
56	27.00
57	27.31
58	27.61
59	27.94
60	28.10
61	28.50
62	28.80
63	29.15
64	29.45
65	29.77
66	29.97
67	30.43
68	30.64
69	31.01
70	31.14
Oversized	44.58

c. Balloon Price

RSCF entered pieces exceeding 84 inches in length and girth combined, but not more than 108 inches, and weighing less than 20 pounds are subject to a price equal to that for a 20-pound parcel for the zone to which the parcel is addressed.

d. Oversized Pieces

Regardless of weight, any piece that measures more than 108 inches (but not more than 130 inches) in length plus girth must pay the oversized price. As stated in the Domestic Mail Manual, any piece that is found to be over the 70 pound maximum weight limitation is nonmailable, will not be delivered, and may be subject to the \$100.00 overweight item charge.

RDU Entered

a. Machinable RDU

Maximum Weight (pounds)	RDU (\$)
1	4.21
2	4.30
3	4.38
4	4.49
5	4.57
6	4.68
7	4.76
8	4.84
9	4.95
10	5.03
11	5.14
12	5.22
13	5.33
14	5.41
15	5.49
16	5.60
17	5.68
18	5.79
19	5.87
20	5.98
21	6.06
22	6.14
23	6.25
24	6.33
25	6.44

a. Machinable RDU (Continued)

Maximum Weight (pounds)	RDU (\$)
26	6.48
27	6.57
28	6.67
29	6.76
30	6.86
31	6.96
32	7.03
33	7.13
34	7.22
35	7.32

b. Nonmachinable RDU

Maximum Weight (pounds)	RDU (\$)
1	4.21
2	4.30
3	4.38
4	4.49
5	4.57
6	4.68
7	4.76
8	4.84
9	4.95
10	5.03
11	5.14
12	5.22
13	5.33
14	5.41
15	5.49
16	5.60
17	5.68
18	5.79
19	5.87
20	5.98
21	6.06
22	6.14
23	6.25
24	6.33
25	6.44

b. Nonmachinable RDU (Continued)

Maximum Weight (pounds)	RDU (\$)
26	6.48
27	6.57
28	6.67
29	6.76
30	6.86
31	6.96
32	7.03
33	7.13
34	7.22
35	7.32
36	7.41
37	7.51
38	7.59
39	7.68
40	7.78
41	7.87
42	7.97
43	8.06
44	8.14
45	8.24
46	8.33
47	8.44
48	8.52
49	8.63
50	8.69

b. Nonmachinable RDU (Continued)

Maximum Weight (pounds)	RDU (\$)
51	8.80
52	8.90
53	8.99
54	9.09
55	9.18
56	9.26
57	9.35
58	9.45
59	9.55
60	9.64
61	9.74
62	9.81
63	9.91
64	10.00
65	10.10
66	10.19
67	10.27
68	10.37
69	10.46
70	10.56
Oversized	14.27

c. Oversized Pieces

Regardless of weight, any piece that measures more than 108 inches (but not more than 130 inches) in length plus girth must pay the oversized price. As stated in the Domestic Mail Manual, any piece that is found to be over the 70 pound maximum weight limitation is nonmailable, will not be delivered, and may be subject to the \$100.00 overweight item charge.

IMpb Noncompliance Fee

Add \$0.25 for each IMpb-noncompliant parcel paying commercial prices.

2125 First-Class Package Service

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2125.6 Prices

Commercial

Maximum Weight (ounces)	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)
1	3.31	3.33	3.36	3.42	3.52	3.65	3.79
2	3.31	3.33	3.36	3.42	3.52	3.65	3.79
3	3.31	3.33	3.36	3.42	3.52	3.65	3.79
4	3.31	3.33	3.36	3.42	3.52	3.65	3.79
5	3.76	3.79	3.81	3.87	3.88	3.99	4.15
6	3.76	3.79	3.81	3.87	3.88	3.99	4.15
7	3.76	3.79	3.81	3.87	3.88	3.99	4.15
8	3.76	3.79	3.81	3.87	3.88	3.99	4.15
9	4.34	4.39	4.42	4.50	4.68	4.83	4.98
10	4.34	4.39	4.42	4.50	4.68	4.83	4.98
11	4.34	4.39	4.42	4.50	4.68	4.83	4.98
12	4.34	4.39	4.42	4.50	4.68	4.83	4.98
13	5.49	5.53	5.57	5.72	5.96	6.11	6.28
14	5.49	5.53	5.57	5.72	5.96	6.11	6.28
15	5.49	5.53	5.57	5.72	5.96	6.11	6.28
15.999	5.49	5.53	5.57	5.72	5.96	6.11	6.28

Retail¹

Maximum Weight (ounces)	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)
1	4.30	4.40	4.45	4.50	4.55	4.60	4.75
2	4.30	4.40	4.45	4.50	4.55	4.60	4.75
3	4.30	4.40	4.45	4.50	4.55	4.60	4.75
4	4.30	4.40	4.45	4.50	4.55	4.60	4.75
5	5.10	5.15	5.20	5.25	5.30	5.40	5.50
6	5.10	5.15	5.20	5.25	5.30	5.40	5.50
7	5.10	5.15	5.20	5.25	5.30	5.40	5.50
8	5.10	5.15	5.20	5.25	5.30	5.40	5.50
9	5.80	5.85	5.90	5.95	6.00	6.15	6.25
10	5.80	5.85	5.90	5.95	6.00	6.15	6.25
11	5.80	5.85	5.90	5.95	6.00	6.15	6.25
12	5.80	5.85	5.90	5.95	6.00	6.15	6.25
13	6.55	6.60	6.70	6.80	6.85	6.95	7.05

Notes

1. A handling charge of \$0.01 per piece applies to foreign-origin, inbound direct entry mail tendered by foreign postal operators, subject to the terms of an authorization arrangement.

Irregular Parcel Surcharge

Add \$0.25 for each irregularly shaped parcel (such as rolls, tubes, and triangles).

IMpb Noncompliance Fee

Add \$0.25 for each IMpb-noncompliant parcel paying commercial prices, unless the eVS Unmanifested Fee was already assessed on that parcel.

eVS Unmanifested Fee

Add \$0.25 for each unmanifested parcel paying commercial prices, unless the IMpb Noncompliance Fee was already assessed on that parcel.

Pickup On Demand Service

Add \$25.00 for each Pickup On Demand stop.

2135 USPS Retail Ground

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2135.6 Prices

USPS Retail Ground¹

Maximum Weight (pounds)	Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)
1	7.95	8.35	8.50	9.15	9.45	9.70	10.30
2	8.80	9.10	10.35	11.70	12.50	13.50	14.55
3	9.30	10.15	11.35	13.35	14.05	16.30	18.35
4	9.80	11.00	12.00	13.95	16.55	19.10	21.70
5	10.85	11.75	12.75	14.65	18.10	21.60	25.10
6	11.65	12.25	13.55	16.80	20.85	24.90	28.90
7	12.65	13.85	16.25	18.80	23.25	27.70	32.20
8	13.05	15.30	18.00	21.60	26.40	31.10	35.90
9	13.55	16.50	19.95	24.55	29.70	34.85	39.95
10	14.40	17.70	21.45	26.15	31.55	36.95	42.25
11	17.05	20.70	24.90	30.20	36.15	42.15	48.20
12	18.40	22.10	26.65	32.15	38.55	45.10	51.50
13	19.40	23.25	28.05	33.85	40.00	46.25	52.35
14	20.50	24.70	29.75	35.70	42.05	48.50	54.80
15	21.20	26.00	31.35	37.65	43.85	50.10	56.20
16	21.85	27.35	33.00	39.55	46.10	52.65	59.25
17	22.80	28.70	34.65	41.45	48.40	55.25	62.15
18	23.15	29.65	36.00	43.40	50.65	57.90	65.20
19	23.80	30.35	36.75	44.40	51.70	59.00	66.35
20	24.70	30.70	37.35	45.25	53.35	61.40	69.50
21	26.50	32.05	38.85	47.80	56.20	64.50	72.95
22	27.05	32.75	39.75	48.85	57.40	66.00	74.55
23	27.65	33.35	40.35	49.60	58.40	67.05	75.75
24	28.20	34.00	41.25	50.50	59.55	68.60	77.55
25	28.50	34.50	42.80	51.85	60.80	69.80	78.85

USPS Retail Ground (Continued)

Maximum Weight (pounds)	Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)
26	29.50	35.10	44.30	52.75	62.15	71.60	81.10
27	30.35	35.60	45.55	55.20	64.70	74.30	83.85
28	31.20	36.00	46.85	56.50	66.60	76.75	86.90
29	32.05	36.40	47.95	57.30	67.85	78.55	89.15
30	32.95	36.85	49.05	58.00	68.95	79.95	90.90
31	33.85	37.20	49.85	58.80	70.15	81.50	92.85
32	34.20	38.00	50.60	59.30	71.00	82.70	94.40
33	34.75	38.90	51.80	60.05	72.10	84.10	96.20
34	35.00	39.90	53.05	61.15	73.45	85.70	97.95
35	35.35	40.80	53.65	62.35	74.70	87.05	99.35
36	35.70	41.90	54.40	63.70	76.20	88.60	101.00
37	36.00	42.55	55.15	64.70	77.40	90.00	102.60
38	36.40	43.60	55.80	65.85	78.65	91.40	104.20
39	36.75	44.55	56.50	67.15	80.00	92.85	105.70
40	37.15	45.40	57.20	68.50	81.30	94.20	107.10
41	37.45	46.25	57.85	69.10	82.30	95.50	108.70
42	37.70	47.00	58.40	70.40	83.55	96.75	110.00
43	38.20	47.75	58.90	71.80	84.90	98.00	111.10
44	38.40	48.50	59.65	73.20	86.30	99.40	112.60
45	38.65	49.00	60.00	74.80	87.80	100.85	113.90
46	38.90	49.30	60.65	76.05	89.05	102.15	115.15
47	39.25	49.75	61.20	77.75	90.60	103.55	116.45
48	39.60	50.15	61.75	79.10	91.90	104.70	117.55
49	39.80	50.45	62.20	80.45	93.20	105.90	118.65
50	39.95	50.75	62.65	81.95	94.55	107.20	119.85

USPS Retail Ground (Continued)

Maximum Weight (pounds)	Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)
51	40.10	51.25	63.20	83.20	95.85	108.35	120.95
52	40.60	51.55	63.60	83.80	96.65	109.45	122.25
53	41.25	51.85	63.95	84.45	97.50	110.60	123.75
54	41.70	52.05	64.40	85.05	98.55	111.95	125.45
55	42.40	52.40	64.75	85.65	99.45	113.20	127.00
56	42.95	52.75	65.10	86.20	100.25	114.20	128.25
57	43.55	52.90	65.45	86.60	100.80	114.90	129.10
58	44.20	53.15	65.90	87.25	101.60	115.90	130.15
59	44.85	53.35	66.20	87.70	102.15	116.60	131.05
60	45.40	53.55	66.80	88.10	102.70	117.30	131.85
61	46.05	53.85	67.95	88.55	103.60	118.60	133.60
62	46.50	53.95	68.75	89.05	104.60	120.15	135.70
63	47.35	54.20	69.90	89.45	105.55	121.65	137.80
64	47.80	55.80	70.85	89.85	106.55	123.15	139.85
65	48.40	55.95	71.75	90.05	107.35	124.60	141.85
66	49.00	56.15	72.90	90.50	108.40	126.15	144.00
67	49.75	56.25	74.10	90.85	109.20	127.50	145.75
68	50.30	56.35	74.95	91.00	109.80	128.50	147.25
69	50.90	56.40	75.85	91.25	110.40	129.60	148.75
70	51.50	56.60	77.05	91.50	111.10	130.75	150.35
Oversized	82.50	104.20	125.95	149.90	171.60	193.25	215.00

Notes

1. Except for oversized pieces, the Zone 1-4 prices are applicable only to parcels containing hazardous or other material not permitted to travel by air transportation. All other parcels for shipment in Zones 1-4 will be converted to Priority Mail service.

Limited Overland Routes

Pieces delivered to or from designated intra-Alaska ZIP Codes not connected by overland routes are eligible for the following prices.

Maximum Weight (pounds)	Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)
1	7.55	7.90	8.25	9.00
2	8.30	8.70	9.35	10.40
3	8.55	9.65	10.60	13.30
4	9.05	10.20	11.25	13.85
5	9.60	10.50	11.85	14.35
6	9.80	11.05	12.45	15.35
7	10.10	11.50	13.20	16.35
8	10.45	12.05	13.90	17.40
9	10.85	12.75	14.65	18.50
10	11.15	13.10	15.30	19.45
11	12.70	14.70	17.15	22.55
12	13.05	15.25	17.85	23.55
13	13.40	15.70	18.60	24.45
14	13.75	16.30	19.25	25.40
15	14.15	16.80	20.00	26.45
16	14.50	17.30	20.70	27.40
17	14.85	17.85	21.40	28.35
18	15.15	18.40	22.10	29.35
19	15.55	18.85	22.70	30.15
20	15.90	19.30	23.30	31.00
21	17.25	20.80	24.90	33.80
22	17.60	21.25	25.50	34.60
23	17.95	21.75	26.10	35.50
24	18.30	22.20	26.75	36.25
25	18.65	22.70	27.50	37.15

Limited Overland Routes (Continued)

Maximum Weight (pounds)	Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)
26	18.95	23.15	28.20	37.95
27	19.35	23.65	28.85	39.00
28	19.70	24.10	29.55	39.85
29	20.10	24.55	30.20	40.70
30	20.60	25.05	30.80	41.50
31	21.15	25.45	31.50	42.25
32	21.45	26.00	32.05	43.05
33	21.85	26.45	32.75	43.85
34	22.35	26.95	33.35	44.70
35	22.95	27.45	34.00	45.55
36	23.20	27.95	34.60	46.40
37	23.65	28.40	35.20	47.25
38	24.10	28.90	35.85	48.15
39	24.60	29.40	36.45	49.00
40	25.05	29.85	37.20	49.90
41	25.50	30.40	37.80	50.65
42	25.85	30.85	38.40	51.55
43	26.30	31.40	38.95	52.35
44	26.60	31.85	39.60	53.20
45	26.95	32.25	40.15	54.15
46	27.30	32.75	40.80	55.05
47	27.70	33.20	41.40	56.00
48	28.00	33.70	41.95	56.80
49	28.40	34.15	42.55	57.75
50	28.80	34.55	43.10	58.65

Limited Overland Routes (Continued)

Maximum Weight (pounds)	Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)
51	29.15	35.05	43.75	59.50
52	29.55	35.55	44.30	60.25
53	29.85	35.95	44.90	61.05
54	30.15	36.40	45.45	61.85
55	30.60	36.80	46.05	62.60
56	30.95	37.30	46.65	63.40
57	31.35	37.75	47.20	64.15
58	31.70	38.20	47.80	64.90
59	32.05	38.65	48.40	65.65
60	32.40	39.10	49.00	66.45
61	32.80	39.55	49.60	67.15
62	33.15	40.00	50.30	68.00
63	33.55	40.50	50.95	68.70
64	33.90	40.90	51.60	69.45
65	34.25	41.35	52.15	70.15
66	34.60	41.75	52.85	70.90
67	35.00	42.25	53.45	71.60
68	35.40	42.65	54.10	72.35
69	35.70	43.10	54.75	73.05
70	36.10	44.25	55.80	73.85
Oversized	51.60	69.80	76.65	94.85

Balloon Price

Limited Overland Routes pieces exceeding 84 inches in length and girth combined (but not more than 108 inches) and weighing less than 20 pounds are subject to a price equal to that for a 20-pound parcel for the zone to which the parcel is addressed.

Oversized Pieces

Regardless of weight, any piece that measures more than 108 inches (but not more than 130 inches) in length plus girth must pay the oversized price. As stated in the Domestic Mail Manual, any piece that is found to be over the 70 pound maximum weight limitation is nonmailable, will not be delivered, and may be subject to the \$100.00 overweight item charge.

Pickup On Demand Service

Add \$25.00 for each Pickup On Demand stop.

Dimensional Weight

In Zones 1-8, parcels exceeding one cubic foot are priced at the actual weight or the dimensional weight, whichever is greater.

For box-shaped parcels, the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) of the parcel, and dividing by 166.

For irregular-shaped parcels (parcels not appearing box-shaped), the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) at the associated maximum cross-sections of the parcel, dividing by 166, and multiplying by an adjustment factor of 0.785.

These dimensional weight rules do not apply to the Limited Overland Routes price category.

IMpb Noncompliance Fee

Add \$0.25 for each IMpb-noncompliant parcel paying commercial prices.

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PART B

COMPETITIVE PRODUCTS

2000 COMPETITIVE PRODUCT LIST

2100 Domestic Products

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2105 Priority Mail Express

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2105.6 Prices

Retail Priority Mail Express Zone/Weight

Maximum Weight (pounds)	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
0.5	26.35	26.60	28.55	31.95	34.15	36.35	38.95	53.10
1	26.75	28.85	32.75	38.20	41.15	43.60	46.15	62.85
2	27.15	31.15	36.90	44.50	48.20	50.85	53.30	72.65
3	27.55	33.40	41.10	50.75	55.20	58.15	60.50	82.40
4	27.95	35.70	45.25	57.05	62.25	65.40	67.65	92.20
5	28.35	37.95	49.45	63.30	69.25	72.65	74.85	101.95
6	31.20	41.65	54.85	69.55	75.65	79.55	81.95	111.60
7	34.10	45.35	60.30	75.75	82.05	86.45	89.05	121.30
8	36.95	49.10	65.70	82.00	88.50	93.40	96.15	130.95
9	39.85	52.80	71.15	88.20	94.90	100.30	103.25	140.65
10	42.70	56.50	76.55	94.45	101.30	107.20	110.35	150.30
11	44.75	60.70	80.85	98.70	105.30	111.40	114.75	156.30
12	46.80	64.90	85.20	102.90	109.30	115.60	119.15	162.30
13	48.90	69.15	89.50	107.15	113.35	119.80	123.60	168.35
14	50.95	73.35	93.80	111.35	117.35	124.00	128.00	174.35
15	53.00	77.55	98.10	115.55	121.35	128.20	132.40	180.35
16	55.05	81.75	102.45	119.80	125.35	132.45	136.80	186.35
17	57.10	85.95	106.75	124.00	129.35	136.65	141.20	192.35
18	59.20	90.20	111.05	128.25	133.40	140.85	145.65	198.40
19	61.25	94.40	115.40	132.45	137.40	145.05	150.05	204.40
20	63.30	98.60	119.70	136.70	141.40	149.25	154.45	210.40
21	65.60	103.15	124.55	142.15	146.90	155.00	160.45	218.55
22	67.95	107.65	129.40	147.55	152.45	160.75	166.45	226.75
23	70.25	112.20	134.20	153.00	157.95	166.50	172.45	234.90
24	72.55	116.70	139.05	158.40	163.50	172.20	178.45	243.10
25	74.85	121.25	143.90	163.85	169.00	177.95	184.45	251.25

Retail Priority Mail Express Zone/Weight (Continued)

Maximum Weight (pounds)	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
26	77.20	125.80	148.75	169.30	174.50	183.70	190.45	259.40
27	79.50	130.30	153.60	174.70	180.05	189.45	196.45	267.60
28	81.80	134.85	158.40	180.15	185.55	195.20	202.40	275.75
29	84.10	139.35	163.25	185.55	191.10	200.95	208.40	283.95
30	86.45	143.90	168.10	191.00	196.60	206.70	214.40	292.10
31	88.75	148.45	172.95	196.45	202.10	212.45	220.40	300.25
32	91.05	152.95	177.80	201.85	207.65	218.15	226.40	308.45
33	93.35	157.50	182.60	207.30	213.15	223.90	232.40	316.60
34	95.70	162.00	187.45	212.70	218.70	229.65	238.40	324.80
35	98.00	166.55	192.30	218.15	224.20	235.40	244.40	332.95
36	100.55	171.00	197.40	224.00	230.30	241.75	250.95	341.95
37	102.75	175.20	202.55	229.65	236.45	248.10	257.65	350.80
38	105.15	179.70	207.65	235.45	242.35	254.20	263.95	359.60
39	107.75	184.05	212.90	241.10	247.90	260.05	270.50	368.50
40	110.05	188.20	218.05	246.95	254.00	266.20	277.15	377.50
41	112.20	192.65	224.20	253.80	261.45	274.05	285.00	388.10
42	114.20	197.05	229.40	259.40	267.65	280.30	291.45	397.00
43	116.85	201.35	234.35	265.10	273.55	286.40	298.00	406.00
44	119.00	205.75	239.60	270.85	279.40	292.55	304.60	414.75
45	121.30	210.10	244.60	276.40	285.35	298.70	311.25	423.90
46	123.60	214.30	250.05	282.25	291.35	304.75	317.70	432.70
47	126.25	218.65	255.05	287.90	297.40	311.05	324.25	441.60
48	128.35	223.20	260.10	293.45	303.35	317.15	330.80	450.55
49	130.70	227.35	265.35	299.15	309.55	323.50	337.30	459.55
50	133.45	231.85	270.50	304.95	315.35	329.50	343.85	468.40

Retail Priority Mail Express Zone/Weight (Continued)

Maximum Weight (pounds)	Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
51	135.80	236.25	275.65	310.55	321.25	335.55	349.55	476.10
52	138.10	240.30	280.70	316.10	327.45	341.85	357.20	486.35
53	140.40	244.85	285.95	321.75	333.45	348.05	363.65	495.30
54	142.90	249.20	291.00	327.25	339.55	354.25	370.10	504.10
55	145.75	254.95	296.30	333.05	345.40	360.25	376.65	513.00
56	148.75	259.40	302.75	340.25	353.00	368.25	385.05	524.55
57	151.35	263.75	307.95	346.00	359.00	374.30	391.60	533.35
58	153.90	267.95	313.10	351.55	365.10	380.55	398.15	542.30
59	156.05	272.30	318.15	357.10	371.30	386.75	404.75	551.25
60	158.15	276.70	323.40	362.80	377.25	392.85	411.30	560.25
61	160.40	281.05	328.85	368.75	383.25	398.95	417.85	569.20
62	162.90	285.35	333.90	374.10	389.20	405.10	424.60	578.30
63	165.55	289.65	339.05	379.80	395.35	411.35	431.15	587.30
64	167.85	293.95	344.15	385.25	401.45	417.60	437.75	596.35
65	170.70	298.30	349.30	390.85	407.45	423.45	444.30	605.10
66	173.90	302.80	354.60	396.60	413.50	429.60	450.85	613.85
67	175.90	307.05	359.85	402.25	419.25	435.55	457.40	623.05
68	178.20	311.35	364.95	407.70	425.55	441.95	464.20	632.25
69	181.00	315.75	370.05	413.35	431.45	447.90	470.50	640.80
70	184.30	320.15	375.30	418.95	437.50	454.00	477.10	649.85

Retail Flat Rate Envelope

	(\$)
Retail Regular Flat Rate Envelope, per piece	26.35
Retail Legal Flat Rate Envelope, per piece	26.50
Retail Padded Flat Rate Envelope, per piece	26.95

Retail Dimensional Weight

In Zones 1-9 (including local), parcels exceeding one cubic foot are priced at the actual weight or the dimensional weight, whichever is greater.

For box-shaped parcels, the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) of the parcel, and dividing by 166.

For irregular-shaped parcels (parcels not appearing box-shaped), the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) at the associated maximum cross-sections of the parcel, dividing by 166, and multiplying by an adjustment factor of 0.785.

Loyalty Program

Upon the initiation of the Loyalty Program, all USPS business customers who use Click-N-Ship will be automatically enrolled in the Basic tier of the Loyalty Program, thereby earning a \$40 credit for every \$500 combined spent at Priority Mail Express Retail and Priority Mail Retail rates.

Beginning on January 1, 2021, and on every January 1 thereafter, all USPS business customers who use Click-N-Ship will be enrolled in one of the following three tiers of the Loyalty Program, based on their combined shipping spend at Priority Mail Express Retail and Priority Mail Retail rates in the previous calendar year, as follows:

- Basic (no minimum spend):
Earn \$40 credit for every \$500 spent
- Silver (at least \$10,000 spend):
Earn \$50 credit for every \$500 spent
- Gold (at least \$20,000 spend):
Qualify for Commercial Base Pricing

In the first year of the Loyalty Program, any new USPS business customer who uses Click-N-Ship will receive a one-time \$40 "Welcome Bonus" credit upon shipping at least \$500 combined at Priority Mail Express Retail and Priority Mail Retail rates.

All participants in the Loyalty Program will be eligible to receive an additional one-time \$20 credit for shipping during the first two months of the program, which will be applied once participants ship at least \$500 combined at Priority Mail Express Retail and Priority Mail Retail rates.

All credits must be redeemed within one year from the date of issuance.

Commercial Base Zone/Weight

Maximum Weight (pounds)	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
0.5	22.75	23.30	25.00	27.45	29.40	31.40	34.00	46.15
1	23.00	25.20	28.55	32.45	35.00	37.25	39.85	54.05
2	23.25	27.05	32.10	37.50	40.60	43.05	45.70	62.00
3	23.50	28.95	35.65	42.50	46.25	48.90	51.55	69.90
4	23.75	30.80	39.20	47.55	51.85	54.70	57.40	77.85
5	24.00	32.70	42.75	52.55	57.45	60.55	63.25	85.75
6	26.45	35.95	47.50	57.80	62.85	66.40	69.35	94.00
7	28.90	39.20	52.25	63.05	68.25	72.25	75.40	102.25
8	31.40	42.50	57.00	68.30	73.70	78.10	81.50	110.45
9	33.85	45.75	61.75	73.55	79.10	83.95	87.55	118.70
10	36.30	49.00	66.50	78.80	84.50	89.80	93.65	126.95
11	38.20	52.90	70.55	82.90	88.40	93.95	98.05	132.90
12	40.10	56.80	74.55	86.95	92.35	98.05	102.40	138.85
13	42.05	60.70	78.60	91.05	96.25	102.20	106.80	144.80
14	43.95	64.60	82.65	95.10	100.15	106.30	111.15	150.75
15	45.85	68.50	86.65	99.20	104.10	110.45	115.55	156.65
16	47.75	72.35	90.70	103.30	108.00	114.55	119.90	162.60
17	49.65	76.25	94.75	107.35	111.90	118.70	124.30	168.55
18	51.60	80.15	98.80	111.45	115.80	122.80	128.65	174.50
19	53.50	84.05	102.80	115.50	119.75	126.95	133.05	180.45
20	55.40	87.95	106.85	119.60	123.65	131.05	137.40	186.40
21	57.45	92.05	111.05	124.25	128.35	135.95	142.60	193.45
22	59.50	96.15	115.25	128.85	133.05	140.90	147.80	200.50
23	61.55	100.25	119.50	133.50	137.80	145.80	153.00	207.55
24	63.60	104.35	123.70	138.15	142.50	150.70	158.20	214.60
25	65.65	108.45	127.90	142.75	147.20	155.65	163.40	221.65

Commercial Base Zone/Weight (Continued)

Maximum Weight (pounds)	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
26	67.70	112.55	132.10	147.40	151.90	160.55	168.60	228.70
27	69.75	116.65	136.30	152.05	156.60	165.45	173.80	235.75
28	71.85	120.70	140.55	156.65	161.35	170.40	179.00	242.80
29	73.90	124.80	144.75	161.30	166.05	175.30	184.20	249.85
30	75.95	128.90	148.95	165.95	170.75	180.20	189.40	256.90
31	78.00	133.00	153.15	170.55	175.45	185.15	194.60	263.95
32	80.05	137.10	157.35	175.20	180.15	190.05	199.80	271.00
33	82.10	141.20	161.60	179.85	184.90	194.95	205.00	278.05
34	84.15	145.30	165.80	184.45	189.60	199.90	210.20	285.10
35	86.20	149.40	170.00	189.10	194.30	204.80	215.40	292.15
36	88.45	153.35	174.65	194.15	199.65	210.35	221.15	300.00
37	90.35	157.15	179.10	199.00	204.95	215.85	226.95	307.85
38	92.45	161.15	183.65	204.05	210.00	221.15	232.60	315.50
39	94.75	165.10	188.30	208.95	214.90	226.25	238.40	323.40
40	96.80	168.80	192.90	214.00	220.15	231.70	244.15	331.25
41	99.20	173.65	198.35	219.90	226.60	238.40	251.10	340.60
42	100.95	177.65	202.85	224.85	231.90	243.90	256.75	348.35
43	103.30	181.45	207.35	229.75	237.05	249.20	262.65	356.20
44	105.10	185.45	211.95	234.70	242.15	254.50	268.30	364.00
45	107.15	189.35	216.35	239.50	247.35	259.90	274.20	371.95
46	109.25	193.20	221.15	244.65	252.50	265.20	279.90	379.70
47	111.55	197.10	225.65	249.55	257.70	270.60	285.70	387.55
48	113.50	201.15	230.10	254.25	262.90	275.95	291.45	395.35
49	115.45	204.90	234.70	259.25	268.25	281.50	297.30	403.30
50	117.95	208.95	239.30	264.30	273.30	286.60	303.00	411.00

Commercial Base Zone/Weight (Continued)

Maximum Weight (pounds)	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
51	120.00	212.95	243.80	269.10	278.40	291.95	307.95	417.75
52	122.10	216.65	248.25	273.95	283.85	297.45	314.60	426.80
53	124.05	220.70	252.90	278.90	289.00	302.80	320.35	434.55
54	126.30	224.65	257.35	283.65	294.20	308.20	326.10	442.40
55	128.80	229.80	262.10	288.70	299.35	313.45	331.80	450.15
56	132.10	234.95	267.85	294.95	305.95	320.30	339.30	460.25
57	134.40	238.90	272.45	299.85	311.15	325.65	345.05	468.00
58	136.70	242.65	276.95	304.65	316.50	331.10	350.85	475.85
59	138.60	246.60	281.50	309.55	321.80	336.50	356.60	483.70
60	140.45	250.55	286.10	314.40	327.00	341.80	362.40	491.60
61	142.40	254.60	290.90	319.50	332.20	347.15	368.20	499.45
62	144.65	258.40	295.30	324.20	337.35	352.35	374.10	507.45
63	147.05	262.35	299.90	329.10	342.60	357.85	379.95	515.35
64	149.00	266.25	304.40	333.85	347.90	363.20	385.75	523.20
65	151.55	270.20	308.95	338.75	353.10	368.40	391.45	530.95
66	154.35	274.25	313.65	343.75	358.30	373.85	397.20	538.70
67	156.15	278.10	318.25	348.65	363.35	378.95	403.05	546.70
68	158.20	282.05	322.80	353.35	368.80	384.55	408.95	554.75
69	160.70	286.05	327.30	358.20	373.90	389.75	414.50	562.30
70	163.65	289.95	331.95	363.05	379.15	395.05	420.35	570.20

Commercial Base Flat Rate Envelope

	(\$)
Commercial Base Regular Flat Rate Envelope, per piece	22.75
Commercial Base Legal Flat Rate Envelope, per piece	22.95
Commercial Base Padded Flat Rate Envelope, per piece	23.25

Commercial Base Dimensional Weight

In Zones 1-9 (including local), parcels exceeding one cubic foot are priced at the actual weight or the dimensional weight, whichever is greater.

For box-shaped parcels, the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) of the parcel, and dividing by 166.

For irregular-shaped parcels (parcels not appearing box-shaped), the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) at the associated maximum cross-sections of the parcel, dividing by 166, and multiplying by an adjustment factor of 0.785.

Commercial Plus Zone/Weight

Maximum Weight (pounds)	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
0.5	22.75	23.30	25.00	27.45	29.40	31.40	34.00	46.15
1	23.00	25.20	28.55	32.45	35.00	37.25	39.85	54.05
2	23.25	27.05	32.10	37.50	40.60	43.05	45.70	62.00
3	23.50	28.95	35.65	42.50	46.25	48.90	51.55	69.90
4	23.75	30.80	39.20	47.55	51.85	54.70	57.40	77.85
5	24.00	32.70	42.75	52.55	57.45	60.55	63.25	85.75
6	26.45	35.95	47.50	57.80	62.85	66.40	69.35	94.00
7	28.90	39.20	52.25	63.05	68.25	72.25	75.40	102.25
8	31.40	42.50	57.00	68.30	73.70	78.10	81.50	110.45
9	33.85	45.75	61.75	73.55	79.10	83.95	87.55	118.70
10	36.30	49.00	66.50	78.80	84.50	89.80	93.65	126.95
11	38.20	52.90	70.55	82.90	88.40	93.95	98.05	132.90
12	40.10	56.80	74.55	86.95	92.35	98.05	102.40	138.85
13	42.05	60.70	78.60	91.05	96.25	102.20	106.80	144.80
14	43.95	64.60	82.65	95.10	100.15	106.30	111.15	150.75
15	45.85	68.50	86.65	99.20	104.10	110.45	115.55	156.65
16	47.75	72.35	90.70	103.30	108.00	114.55	119.90	162.60
17	49.65	76.25	94.75	107.35	111.90	118.70	124.30	168.55
18	51.60	80.15	98.80	111.45	115.80	122.80	128.65	174.50
19	53.50	84.05	102.80	115.50	119.75	126.95	133.05	180.45
20	55.40	87.95	106.85	119.60	123.65	131.05	137.40	186.40
21	57.45	92.05	111.05	124.25	128.35	135.95	142.60	193.45
22	59.50	96.15	115.25	128.85	133.05	140.90	147.80	200.50
23	61.55	100.25	119.50	133.50	137.80	145.80	153.00	207.55
24	63.60	104.35	123.70	138.15	142.50	150.70	158.20	214.60
25	65.65	108.45	127.90	142.75	147.20	155.65	163.40	221.65

Commercial Plus Zone/Weight (Continued)

Maximum Weight (pounds)	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
26	67.70	112.55	132.10	147.40	151.90	160.55	168.60	228.70
27	69.75	116.65	136.30	152.05	156.60	165.45	173.80	235.75
28	71.85	120.70	140.55	156.65	161.35	170.40	179.00	242.80
29	73.90	124.80	144.75	161.30	166.05	175.30	184.20	249.85
30	75.95	128.90	148.95	165.95	170.75	180.20	189.40	256.90
31	78.00	133.00	153.15	170.55	175.45	185.15	194.60	263.95
32	80.05	137.10	157.35	175.20	180.15	190.05	199.80	271.00
33	82.10	141.20	161.60	179.85	184.90	194.95	205.00	278.05
34	84.15	145.30	165.80	184.45	189.60	199.90	210.20	285.10
35	86.20	149.40	170.00	189.10	194.30	204.80	215.40	292.15
36	88.45	153.35	174.65	194.15	199.65	210.35	221.15	300.00
37	90.35	157.15	179.10	199.00	204.95	215.85	226.95	307.85
38	92.45	161.15	183.65	204.05	210.00	221.15	232.60	315.50
39	94.75	165.10	188.30	208.95	214.90	226.25	238.40	323.40
40	96.80	168.80	192.90	214.00	220.15	231.70	244.15	331.25
41	99.20	173.65	198.35	219.90	226.60	238.40	251.10	340.60
42	100.95	177.65	202.85	224.85	231.90	243.90	256.75	348.35
43	103.30	181.45	207.35	229.75	237.05	249.20	262.65	356.20
44	105.10	185.45	211.95	234.70	242.15	254.50	268.30	364.00
45	107.15	189.35	216.35	239.50	247.35	259.90	274.20	371.95
46	109.25	193.20	221.15	244.65	252.50	265.20	279.90	379.70
47	111.55	197.10	225.65	249.55	257.70	270.60	285.70	387.55
48	113.50	201.15	230.10	254.25	262.90	275.95	291.45	395.35
49	115.45	204.90	234.70	259.25	268.25	281.50	297.30	403.30
50	117.95	208.95	239.30	264.30	273.30	286.60	303.00	411.00

Commercial Plus Zone/Weight (Continued)

Maximum Weight (pounds)	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
51	120.00	212.95	243.80	269.10	278.40	291.95	307.95	417.75
52	122.10	216.65	248.25	273.95	283.85	297.45	314.60	426.80
53	124.05	220.70	252.90	278.90	289.00	302.80	320.35	434.55
54	126.30	224.65	257.35	283.65	294.20	308.20	326.10	442.40
55	128.80	229.80	262.10	288.70	299.35	313.45	331.80	450.15
56	132.10	234.95	267.85	294.95	305.95	320.30	339.30	460.25
57	134.40	238.90	272.45	299.85	311.15	325.65	345.05	468.00
58	136.70	242.65	276.95	304.65	316.50	331.10	350.85	475.85
59	138.60	246.60	281.50	309.55	321.80	336.50	356.60	483.70
60	140.45	250.55	286.10	314.40	327.00	341.80	362.40	491.60
61	142.40	254.60	290.90	319.50	332.20	347.15	368.20	499.45
62	144.65	258.40	295.30	324.20	337.35	352.35	374.10	507.45
63	147.05	262.35	299.90	329.10	342.60	357.85	379.95	515.35
64	149.00	266.25	304.40	333.85	347.90	363.20	385.75	523.20
65	151.55	270.20	308.95	338.75	353.10	368.40	391.45	530.95
66	154.35	274.25	313.65	343.75	358.30	373.85	397.20	538.70
67	156.15	278.10	318.25	348.65	363.35	378.95	403.05	546.70
68	158.20	282.05	322.80	353.35	368.80	384.55	408.95	554.75
69	160.70	286.05	327.30	358.20	373.90	389.75	414.50	562.30
70	163.65	289.95	331.95	363.05	379.15	395.05	420.35	570.20

Commercial Plus Flat Rate Envelope

	(\$)
Commercial Plus Regular Flat Rate Envelope, per piece	22.75
Commercial Plus Legal Flat Rate Envelope, per piece	22.95
Commercial Plus Padded Flat Rate Envelope, per piece	23.25

Commercial Plus Dimensional Weight

In Zones 1-9 (including local), parcels exceeding one cubic foot are priced at the actual weight or the dimensional weight, whichever is greater.

For box-shaped parcels, the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) of the parcel, and dividing by 166.

For irregular-shaped parcels (parcels not appearing box-shaped), the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) at the associated maximum cross-sections of the parcel, dividing by 166, and multiplying by an adjustment factor of 0.785.

Pickup On Demand Service

Add \$25.00 for each Pickup On Demand stop.

Sunday/Holiday Delivery

Add \$12.50 for requesting Sunday or holiday delivery.

IMpb Noncompliance Fee

Add \$0.25 for each IMpb-noncompliant parcel paying commercial prices, unless the eVS Unmanifested Fee was already assessed on that parcel.

eVS Unmanifested Fee

Add \$0.25 for each unmanifested parcel paying commercial prices, unless the IMpb Noncompliance Fee was already assessed on that parcel.

2110 Priority Mail

* * *

2110.6 Prices

Retail Priority Mail Zone/Weight

Maximum Weight (pounds)	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
1	7.70	8.10	8.25	8.50	8.80	9.10	9.90	16.85
2	8.55	8.85	10.10	11.10	11.95	13.90	15.20	26.75
3	9.05	9.90	11.10	12.80	13.50	17.20	20.40	35.80
4	9.55	10.75	11.75	14.20	17.60	21.20	23.60	41.45
5	10.60	11.50	12.50	14.65	20.00	24.30	27.20	47.95
6	11.40	12.00	13.30	16.30	22.90	27.15	30.65	54.15
7	12.40	13.60	16.00	19.70	25.40	30.35	34.45	60.85
8	12.80	15.05	17.75	23.45	28.80	33.75	38.55	68.10
9	13.30	16.25	19.70	26.75	31.30	36.40	42.90	75.80
10	14.15	17.45	21.20	29.00	33.90	40.00	46.75	82.60
11	15.55	19.20	23.40	31.10	38.10	46.30	53.75	91.40
12	16.90	20.60	25.15	34.50	41.45	50.10	57.15	98.10
13	17.90	21.75	26.55	36.45	44.50	52.10	59.80	101.60
14	19.00	23.20	28.25	38.80	46.95	55.00	62.90	106.70
15	19.70	24.50	29.85	41.05	49.00	56.30	64.50	109.75
16	20.35	25.85	31.50	43.35	51.70	59.35	68.10	115.75
17	21.30	27.20	33.15	45.55	54.35	62.50	71.65	121.90
18	21.65	28.15	34.50	47.80	57.20	65.55	75.35	128.10
19	22.30	28.85	35.25	49.15	58.30	67.00	76.90	134.15
20	23.20	29.20	35.85	49.80	59.75	69.35	80.50	140.35
21	24.00	29.55	36.35	50.70	60.75	70.50	82.35	144.70
22	24.55	30.25	37.25	51.90	62.10	72.20	84.30	148.30
23	25.15	30.85	37.85	52.75	63.25	73.65	85.80	150.85
24	25.70	31.50	38.75	53.90	64.55	75.50	87.90	154.60
25	26.00	32.00	40.30	56.35	65.35	77.35	89.35	157.15

Retail Priority Mail Zone/Weight (Continued)

Maximum Weight (pounds)	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
26	27.00	32.60	41.80	57.50	67.00	79.25	92.20	162.15
27	27.85	33.10	43.05	58.65	68.00	81.15	95.65	168.20
28	28.70	33.50	44.35	60.10	68.80	83.00	99.25	174.55
29	29.55	33.90	45.45	61.00	70.00	84.85	101.95	179.25
30	30.45	34.35	46.55	61.80	71.95	86.85	104.15	183.20
31	31.35	34.70	47.35	62.65	73.05	88.70	106.20	188.35
32	31.70	35.50	48.10	63.35	73.95	90.60	108.40	192.20
33	32.25	36.40	49.30	64.15	75.40	92.45	110.40	195.85
34	32.50	37.40	50.55	65.55	77.15	94.40	112.50	199.45
35	32.85	38.30	51.15	66.95	79.20	96.25	114.35	202.80
36	33.20	39.40	51.90	68.35	81.30	97.55	116.40	206.30
37	33.50	40.05	52.65	69.60	83.40	98.80	118.25	209.70
38	33.90	41.10	53.30	70.95	85.70	100.00	120.15	213.10
39	34.25	42.05	54.00	72.45	87.75	102.60	121.95	216.30
40	34.65	42.90	54.70	74.05	89.15	104.90	123.70	219.30
41	34.95	43.75	55.35	74.70	90.60	107.15	125.50	224.20
42	35.20	44.50	55.90	76.30	92.20	108.50	127.15	227.35
43	35.70	45.25	56.40	78.05	94.45	109.95	128.75	230.15
44	35.90	46.00	57.15	79.60	95.95	111.20	130.30	232.95
45	36.15	46.50	57.50	81.45	97.00	112.45	131.95	235.85
46	36.40	46.80	58.15	82.90	98.05	113.65	133.50	238.70
47	36.75	47.25	58.70	84.80	99.15	114.90	135.00	241.25
48	37.10	47.65	59.25	86.45	100.45	116.00	136.45	243.90
49	37.30	47.95	59.70	88.05	101.75	117.25	137.85	246.35
50	37.45	48.25	60.15	89.75	103.10	118.75	139.20	248.90

Retail Priority Mail Zone/Weight (Continued)

Maximum Weight (pounds)	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
51	37.60	48.75	60.70	91.30	104.55	120.50	140.50	253.15
52	38.10	49.05	61.10	92.00	105.65	122.25	142.15	256.30
53	38.75	49.35	61.45	92.75	106.55	124.20	144.05	259.60
54	39.20	49.55	61.90	93.50	107.30	126.10	146.05	263.20
55	39.90	49.90	62.25	94.20	108.10	128.05	148.00	266.70
56	40.45	50.25	62.60	94.80	108.90	129.85	149.40	269.20
57	41.05	50.40	62.95	95.35	109.65	131.85	150.50	271.15
58	41.70	50.65	63.40	96.00	110.30	133.65	151.65	273.15
59	42.35	50.85	63.70	96.60	110.95	134.45	152.85	275.35
60	42.90	51.05	64.30	97.05	111.50	135.20	153.80	277.15
61	43.55	51.35	65.45	97.55	112.15	136.00	155.90	281.00
62	44.00	51.45	66.25	98.10	112.70	136.65	158.45	285.40
63	44.85	51.70	67.40	98.50	113.30	137.25	160.95	290.05
64	45.30	53.30	68.35	98.95	113.75	137.95	163.35	294.40
65	45.90	53.45	69.25	99.35	114.20	138.55	166.00	299.10
66	46.50	53.65	70.40	99.80	114.70	139.05	168.30	303.35
67	47.25	53.75	71.60	100.10	115.00	139.60	170.55	307.30
68	47.80	53.85	72.45	100.35	116.50	140.15	172.40	310.65
69	48.40	53.90	73.35	100.65	117.90	140.50	174.25	313.90
70	49.00	54.10	74.55	101.00	119.40	141.00	176.15	317.25

Retail Flat Rate Envelopes¹

	(\$)
Retail Regular Flat Rate Envelope, per piece	7.95
Retail Legal Flat Rate Envelope, per piece	8.25
Retail Padded Flat Rate Envelope, per piece	8.55

Notes

1. The price for Regular, Legal, or Padded Flat Rate Envelopes also applies to sales of Regular, Legal, or Padded Flat Rate Envelopes, respectively, marked with Forever postage, at the time the envelopes are purchased.

Retail Flat Rate Boxes¹

Size	Delivery to Domestic Address (\$)	Delivery to APO/FPO/DPO Address (\$)
Small Flat Rate Box	8.45	8.45
Medium Flat Rate Boxes	15.50	15.50
Large Flat Rate Boxes	21.90	20.40

Notes

1. The price for Small, Medium, or Large Flat Rate Boxes also applies to sales of Small, Medium, or Large Flat Rate Boxes, respectively, marked with Forever postage, at the time the boxes are purchased.

Regional Rate Boxes

Size	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
A	10.13	10.34	10.64	11.31	13.19	13.93	14.94	25.67
B	10.53	10.94	11.86	14.66	19.80	22.40	25.20	45.28

Retail Dimensional Weight

In Zones 1-9 (including local), parcels exceeding one cubic foot are priced at the actual weight or the dimensional weight, whichever is greater.

For box-shaped parcels, the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) of the parcel, and dividing by 166.

For irregular-shaped parcels (parcels not appearing box-shaped), the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) at the associated maximum cross-sections of the parcel, dividing by 166, and multiplying by an adjustment factor of 0.785.

Loyalty Program

Upon the initiation of the Loyalty Program, all USPS business customers who use Click-N-Ship will be automatically enrolled in the Basic tier of the Loyalty Program, thereby earning a \$40 credit for every \$500 combined spent at Priority Mail Express Retail and Priority Mail Retail rates.

Beginning on January 1, 2021, and on every January 1 thereafter, all USPS business customers who use Click-N-Ship will be enrolled in one of the following three tiers of the Loyalty Program, based on their combined shipping spend at Priority Mail Express Retail and Priority Mail Retail rates in the previous calendar year, as follows:

- Basic (no minimum spend):
Earn \$40 credit for every \$500 spent
- Silver (at least \$10,000 spend):
Earn \$50 credit for every \$500 spent
- Gold (at least \$20,000 spend):
Qualify for Commercial Base Pricing

In the first year of the Loyalty Program, any new USPS business customer who uses Click-N-Ship will receive a one-time \$40 "Welcome Bonus" credit upon shipping at least \$500 combined at Priority Mail Express Retail and Priority Mail Retail rates.

All participants in the Loyalty Program will be eligible to receive an additional one-time \$20 credit for shipping during the first two months of the program, which will be applied once participants ship at least \$500 combined at Priority Mail Express Retail and Priority Mail Retail rates.

All credits must be redeemed within one year from the date of issuance.

Commercial Base Priority Mail Zone/Weight

Maximum Weight (pounds)	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
1	7.16	7.46	7.67	7.88	8.34	8.52	8.80	14.25
2	7.79	7.96	8.24	8.85	10.44	11.01	11.69	21.81
3	8.00	8.35	8.72	9.64	12.70	14.10	16.45	29.59
4	8.10	8.58	9.21	10.43	14.80	16.78	18.96	35.63
5	8.20	8.63	9.53	11.70	16.87	19.29	21.96	41.46
6	8.31	8.67	9.64	14.32	19.39	22.52	25.75	47.51
7	8.73	10.08	10.13	16.53	21.48	25.39	28.93	53.35
8	8.79	10.58	11.95	18.04	23.59	27.96	32.49	59.89
9	9.65	10.98	12.45	19.34	25.67	30.28	36.12	66.60
10	10.15	11.54	12.65	21.11	28.00	33.63	39.67	72.43
11	12.15	14.54	15.59	24.26	32.07	39.05	45.84	79.13
12	12.90	15.47	18.16	25.99	34.99	42.24	49.20	84.83
13	13.57	16.36	19.01	27.38	37.55	43.95	50.94	87.86
14	14.27	17.26	20.02	28.98	39.67	46.40	53.47	92.21
15	14.82	18.17	20.99	30.47	41.20	47.29	54.87	94.65
16	15.47	19.32	22.34	32.28	43.95	50.42	58.44	99.85
17	15.96	20.21	23.40	33.86	46.18	53.04	61.55	105.11
18	16.28	20.83	24.46	35.38	48.62	55.66	64.63	110.41
19	16.65	21.32	25.02	36.31	50.80	58.25	67.69	115.65
20	17.31	21.65	25.52	36.98	52.12	60.42	70.83	120.98
21	18.07	22.17	26.11	37.64	52.53	61.00	71.74	123.56
22	18.64	22.77	26.98	38.39	52.89	61.47	72.57	125.00
23	19.20	23.31	27.63	39.09	53.17	61.89	73.00	125.74
24	19.98	24.30	29.20	40.62	54.30	63.50	74.78	128.81
25	20.75	25.16	31.05	41.99	55.10	65.09	76.08	131.03

Commercial Base Priority Mail Zone/Weight (Continued)

Maximum Weight (pounds)	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
26	22.01	26.97	34.29	44.23	56.44	66.69	78.46	135.13
27	23.32	28.19	36.38	48.20	57.20	68.24	81.40	140.24
28	24.03	28.56	37.41	49.46	57.98	69.83	84.46	145.50
29	24.77	28.85	38.42	50.12	58.95	71.43	86.74	149.39
30	25.50	29.27	39.32	50.80	60.60	73.00	88.59	152.63
31	26.22	29.56	39.94	51.45	61.48	74.61	90.41	157.00
32	26.52	30.19	40.60	52.05	62.28	76.22	92.26	160.20
33	26.93	31.02	41.61	52.74	63.49	77.79	93.95	163.16
34	27.18	31.83	42.67	53.88	65.00	79.39	95.71	166.25
35	27.48	32.58	43.28	55.02	66.74	80.98	97.36	169.08
36	27.82	33.53	43.85	56.21	68.42	82.08	99.01	171.96
37	28.11	34.15	44.48	57.21	70.21	83.13	100.64	174.80
38	28.39	34.98	45.04	58.35	72.16	84.08	102.23	177.59
39	28.66	35.80	45.56	59.56	73.87	86.30	103.82	180.34
40	28.96	36.55	46.15	60.80	75.05	88.23	105.24	182.78
41	29.27	37.16	46.64	61.34	76.32	90.11	106.76	186.89
42	29.49	37.44	47.05	62.37	77.66	91.34	108.22	189.44
43	29.83	37.72	47.47	63.40	79.52	92.48	109.60	191.86
44	30.04	37.99	47.88	64.42	80.78	93.58	110.84	194.08
45	30.23	38.26	48.31	65.46	81.68	94.59	112.24	196.53
46	30.50	38.54	48.73	66.49	82.59	95.61	113.60	198.86
47	30.72	38.81	49.14	67.52	83.45	96.70	114.85	201.09
48	30.98	39.09	49.56	68.54	84.52	97.63	116.07	203.28
49	31.22	39.35	49.98	69.57	85.68	98.65	117.25	205.26
50	31.35	39.62	50.40	70.61	86.88	99.90	118.48	207.46

Commercial Base Priority Mail Zone/Weight (Continued)

Maximum Weight (pounds)	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
51	31.81	39.90	50.79	71.81	88.07	101.33	119.58	211.06
52	32.28	40.18	51.21	72.32	88.92	102.86	121.00	213.53
53	32.88	40.44	51.63	72.91	89.67	104.54	122.54	216.26
54	33.36	40.73	52.04	73.54	90.31	106.04	124.26	219.29
55	33.88	40.99	52.46	74.00	91.06	107.72	125.93	222.24
56	34.35	41.27	52.88	74.56	91.66	109.24	127.22	224.54
57	34.89	41.54	53.30	75.00	92.36	110.90	128.34	226.55
58	35.42	41.81	53.71	75.48	92.91	112.37	129.40	228.38
59	35.93	42.09	54.12	75.94	93.43	113.14	130.35	230.09
60	36.38	42.36	54.53	76.36	93.90	113.80	131.29	231.70
61	36.97	42.62	54.95	76.74	94.42	114.46	133.05	234.85
62	37.42	42.90	55.36	77.08	94.86	114.96	135.17	238.55
63	38.10	43.18	55.79	77.49	95.40	115.51	137.34	242.38
64	38.43	43.44	56.20	77.83	95.83	116.04	139.44	246.11
65	38.99	43.72	56.63	78.07	96.11	116.62	141.61	249.96
66	39.50	44.00	57.03	78.42	96.59	116.97	143.67	253.59
67	40.09	44.27	58.00	78.70	96.90	117.44	145.59	256.93
68	40.56	44.54	58.73	78.92	98.12	118.05	147.13	259.65
69	41.11	44.82	59.48	79.15	99.30	118.60	148.68	262.43
70	41.54	45.09	60.42	79.40	100.50	119.03	150.28	265.24

Commercial Base Flat Rate Envelope

	(\$)
Commercial Base Regular Flat Rate Envelope, per piece	7.40
Commercial Base Legal Flat Rate Envelope, per piece	7.70
Commercial Base Padded Flat Rate Envelope, per piece	8.00

Commercial Base Flat Rate Box

Size	Delivery to Domestic Address (\$)	Delivery to APO/FPO/DPO Address (\$)
Small Flat Rate Box	7.90	7.90
Regular Flat Rate Boxes	13.75	13.75
Large Flat Rate Boxes	19.30	17.80

Commercial Base Regional Rate Boxes

Size	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
A	7.83	8.04	8.34	9.01	10.89	11.63	12.64	23.37
B	8.23	8.64	9.56	12.36	17.50	20.10	22.90	42.98

Commercial Base Dimensional Weight

In Zones 1-9 (including local), parcels exceeding one cubic foot are priced at the actual weight or the dimensional weight, whichever is greater.

For box-shaped parcels, the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) of the parcel, and dividing by 166.

For irregular-shaped parcels (parcels not appearing box-shaped), the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) at the associated maximum cross-sections of the parcel, dividing by 166, and multiplying by an adjustment factor of 0.785.

Commercial Plus Priority Mail Zone/Weight

Maximum Weight (pounds)	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
0.5	7.16	7.46	7.67	7.88	8.34	8.52	8.80	14.25
1	7.16	7.46	7.67	7.88	8.34	8.52	8.80	14.25
2	7.79	7.96	8.24	8.85	10.44	11.01	11.69	21.81
3	8.00	8.35	8.72	9.64	12.70	14.10	16.45	29.59
4	8.10	8.58	9.21	10.43	14.80	16.78	18.96	35.63
5	8.20	8.63	9.53	11.70	16.87	19.29	21.96	41.46
6	8.31	8.67	9.64	14.32	19.39	22.52	25.75	47.51
7	8.73	10.08	10.13	16.53	21.48	25.39	28.93	53.35
8	8.79	10.58	11.95	18.04	23.59	27.96	32.49	59.89
9	9.65	10.98	12.45	19.34	25.67	30.28	36.12	66.60
10	10.15	11.54	12.65	21.11	28.00	33.63	39.67	72.43
11	12.15	14.54	15.59	24.26	32.07	39.05	45.84	79.13
12	12.90	15.47	18.16	25.99	34.99	42.24	49.20	84.83
13	13.57	16.36	19.01	27.38	37.55	43.95	50.94	87.86
14	14.27	17.26	20.02	28.98	39.67	46.40	53.47	92.21
15	14.82	18.17	20.99	30.47	41.20	47.29	54.87	94.65
16	15.47	19.32	22.34	32.28	43.95	50.42	58.44	99.85
17	15.96	20.21	23.40	33.86	46.18	53.04	61.55	105.11
18	16.28	20.83	24.46	35.38	48.62	55.66	64.63	110.41
19	16.65	21.32	25.02	36.31	50.80	58.25	67.69	115.65
20	17.31	21.65	25.52	36.98	52.12	60.42	70.83	120.98
21	18.07	22.17	26.11	37.64	52.53	61.00	71.74	123.56
22	18.64	22.77	26.98	38.39	52.89	61.47	72.57	125.00
23	19.20	23.31	27.63	39.09	53.17	61.89	73.00	125.74
24	19.98	24.30	29.20	40.62	54.30	63.50	74.78	128.81
25	20.75	25.16	31.05	41.99	55.10	65.09	76.08	131.03

Commercial Plus Priority Mail Zone/Weight (Continued)

Maximum Weight (pounds)	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
26	22.01	26.97	34.29	44.23	56.44	66.69	78.46	135.13
27	23.32	28.19	36.38	48.20	57.20	68.24	81.40	140.24
28	24.03	28.56	37.41	49.46	57.98	69.83	84.46	145.50
29	24.77	28.85	38.42	50.12	58.95	71.43	86.74	149.39
30	25.50	29.27	39.32	50.80	60.60	73.00	88.59	152.63
31	26.22	29.56	39.94	51.45	61.48	74.61	90.41	157.00
32	26.52	30.19	40.60	52.05	62.28	76.22	92.26	160.20
33	26.93	31.02	41.61	52.74	63.49	77.79	93.95	163.16
34	27.18	31.83	42.67	53.88	65.00	79.39	95.71	166.25
35	27.48	32.58	43.28	55.02	66.74	80.98	97.36	169.08
36	27.82	33.53	43.85	56.21	68.42	82.08	99.01	171.96
37	28.11	34.15	44.48	57.21	70.21	83.13	100.64	174.80
38	28.39	34.98	45.04	58.35	72.16	84.08	102.23	177.59
39	28.66	35.80	45.56	59.56	73.87	86.30	103.82	180.34
40	28.96	36.55	46.15	60.80	75.05	88.23	105.24	182.78
41	29.27	37.16	46.64	61.34	76.32	90.11	106.76	186.89
42	29.49	37.44	47.05	62.37	77.66	91.34	108.22	189.44
43	29.83	37.72	47.47	63.40	79.52	92.48	109.60	191.86
44	30.04	37.99	47.88	64.42	80.78	93.58	110.84	194.08
45	30.23	38.26	48.31	65.46	81.68	94.59	112.24	196.53
46	30.50	38.54	48.73	66.49	82.59	95.61	113.60	198.86
47	30.72	38.81	49.14	67.52	83.45	96.70	114.85	201.09
48	30.98	39.09	49.56	68.54	84.52	97.63	116.07	203.28
49	31.22	39.35	49.98	69.57	85.68	98.65	117.25	205.26
50	31.35	39.62	50.40	70.61	86.88	99.90	118.48	207.46

Commercial Plus Priority Mail Zone/Weight (Continued)

Maximum Weight (pounds)	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
51	31.81	39.90	50.79	71.81	88.07	101.33	119.58	211.06
52	32.28	40.18	51.21	72.32	88.92	102.86	121.00	213.53
53	32.88	40.44	51.63	72.91	89.67	104.54	122.54	216.26
54	33.36	40.73	52.04	73.54	90.31	106.04	124.26	219.29
55	33.88	40.99	52.46	74.00	91.06	107.72	125.93	222.24
56	34.35	41.27	52.88	74.56	91.66	109.24	127.22	224.54
57	34.89	41.54	53.30	75.00	92.36	110.90	128.34	226.55
58	35.42	41.81	53.71	75.48	92.91	112.37	129.40	228.38
59	35.93	42.09	54.12	75.94	93.43	113.14	130.35	230.09
60	36.38	42.36	54.53	76.36	93.90	113.80	131.29	231.70
61	36.97	42.62	54.95	76.74	94.42	114.46	133.05	234.85
62	37.42	42.90	55.36	77.08	94.86	114.96	135.17	238.55
63	38.10	43.18	55.79	77.49	95.40	115.51	137.34	242.38
64	38.43	43.44	56.20	77.83	95.83	116.04	139.44	246.11
65	38.99	43.72	56.63	78.07	96.11	116.62	141.61	249.96
66	39.50	44.00	57.03	78.42	96.59	116.97	143.67	253.59
67	40.09	44.27	58.00	78.70	96.90	117.44	145.59	256.93
68	40.56	44.54	58.73	78.92	98.12	118.05	147.13	259.65
69	41.11	44.82	59.48	79.15	99.30	118.60	148.68	262.43
70	41.54	45.09	60.42	79.40	100.50	119.03	150.28	265.24

Commercial Plus Flat Rate Envelope

	(\$)
Commercial Plus Regular Flat Rate Envelope, per piece	7.40
Commercial Plus Legal Flat Rate Envelope, per piece	7.70
Commercial Plus Padded Flat Rate Envelope, per piece	8.00

Commercial Plus Flat Rate Box

Size	Delivery to Domestic Address (\$)	Delivery to APO/FPO/DPO Address (\$)
Small Flat Rate Box	7.90	7.90
Medium Flat Rate Boxes	13.75	13.75
Large Flat Rate Boxes	19.30	17.80

Commercial Plus Regional Rate Boxes

Maximum Cubic Feet	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
A	7.83	8.04	8.34	9.01	10.89	11.63	12.64	23.37
B	8.23	8.64	9.56	12.36	17.50	20.10	22.90	42.98

Commercial Plus Dimensional Weight

In Zones 1-9 (including local), parcels exceeding one cubic foot are priced at the actual weight or the dimensional weight, whichever is greater.

For box-shaped parcels, the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) of the parcel, and dividing by 166.

For irregular-shaped parcels (parcels not appearing box-shaped), the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) at the associated maximum cross-sections of the parcel, dividing by 166, and multiplying by an adjustment factor of 0.785.

Commercial Plus Cubic

Maximum Cubic Feet	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
0.10	7.32	7.59	7.81	8.12	8.87	9.14	9.52	16.14
0.20	8.14	8.46	8.71	9.00	9.68	9.93	10.31	17.09
0.30	8.77	8.96	9.28	9.97	11.79	12.45	13.25	24.69
0.40	8.93	9.27	9.66	10.60	13.58	14.89	17.01	30.84
0.50	9.08	9.58	10.22	11.50	16.02	18.08	20.58	38.28

Open and Distribute (PMOD)

a. DDU

Container	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
Half Tray	8.84	10.82	13.08	21.04	21.32	23.18	25.73	32.17
Full Tray	12.02	15.03	17.50	30.63	35.20	37.41	41.74	52.17
EMM Tray	13.78	16.42	20.28	33.88	37.20	40.84	45.42	56.77
Flat Tub	19.69	24.68	30.51	51.60	62.29	67.34	74.96	93.69

b. Processing Facilities

Container	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)	Zone 9 (\$)
Half Tray	7.16	8.87	10.90	19.00	19.42	21.24	22.80	28.51
Full Tray	9.06	11.69	14.55	26.54	31.37	33.58	37.53	46.92
EMM Tray	10.81	12.53	17.07	29.30	33.28	36.64	42.34	52.94
Flat Tub	15.47	20.45	25.91	47.31	57.79	62.90	69.19	86.50

Pickup On Demand Service

Add \$25.00 for each Pickup On Demand stop.

IMpb Noncompliance Fee

Add \$0.25 for each IMpb-noncompliant parcel paying commercial prices, unless the eVS Unmanifested Fee was already assessed on that parcel.

eVS Unmanifested Fee

Add \$0.25 for each unmanifested parcel paying commercial prices, unless the IMpb Noncompliance Fee was already assessed on that parcel.

2115 Parcel Select

* * *

2115.6 Prices

Destination Entered — DDU

a. DDU

Maximum Weight (pounds)	DDU (\$)
1	3.30
2	3.42
3	3.54
4	3.66
5	3.78
6	3.90
7	4.02
8	4.14
9	4.27
10	4.40
11	4.53
12	4.66
13	4.79
14	4.92
15	5.05
16	5.18
17	5.31
18	5.44
19	5.57
20	5.70
21	6.21
22	6.30
23	6.36
24	6.40
25	6.44

a. DDU (Continued)

Maximum Weight (pounds)	DDU (\$)
26	6.48
27	6.52
28	6.56
29	6.60
30	6.64
31	6.68
32	6.72
33	6.76
34	6.80
35	6.84
36	7.04
37	7.08
38	7.12
39	7.16
40	7.20
41	7.24
42	7.28
43	7.32
44	7.36
45	7.40
46	7.44
47	7.49
48	7.54
49	7.60
50	7.66

a. DDU (Continued)

Maximum Weight (pounds)	DDU (\$)
51	7.73
52	7.80
53	7.88
54	7.96
55	8.04
56	8.12
57	8.20
58	8.28
59	8.36
60	8.44
61	8.52
62	8.60
63	8.68
64	8.76
65	8.84
66	8.92
67	9.00
68	9.08
69	9.16
70	9.24
Oversized	13.97

b. Dimensional Weight

Parcels exceeding one cubic foot are priced at the actual weight or the dimensional weight, whichever is greater.

For box-shaped parcels, the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) of the parcel, and dividing by 166.

For irregular-shaped parcels (parcels not appearing box-shaped), the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) at the associated maximum cross-sections of the parcel, dividing by 166, and multiplying by an adjustment factor of 0.785.

c. Oversized Pieces

Regardless of weight, any piece that measures more than 108 inches (but not more than 130 inches) in length plus girth must pay the oversized price. As stated in the Domestic Mail Manual, any piece that is found to be over the 70 pound maximum weight limitation is nonmailable, will not be delivered, and may be subject to the \$100.00 overweight item charge.

d. Forwarding and Returns

Parcel Select pieces that are forwarded on request of the addressee or forwarded or returned on request of the mailer will be subject to the applicable Parcel Select Ground price, plus \$3.00, when forwarded or returned. For customers using Address Correction Service with Shipper Paid Forwarding/Return, and also using an IMpb, the additional fee will be \$2.50.

Destination Entered — DSCF

a. DSCF — 5-Digit Machinable

Maximum Weight (pounds)	DSCF 5-Digit (\$)
1	4.84
2	5.02
3	5.20
4	5.38
5	5.56
6	5.74
7	5.93
8	6.12
9	6.31
10	6.50
11	6.69
12	6.87
13	7.06
14	7.25
15	7.44
16	7.63
17	7.82
18	8.01
19	8.20
20	8.39
21	8.58
22	8.77
23	8.96
24	9.15
25	9.34

a. DSCF — 5-Digit Machinable (Continued)

Maximum Weight (pounds)	DSCF 5-Digit (\$)
26	9.53
27	9.72
28	9.91
29	10.10
30	10.29
31	10.48
32	10.67
33	10.86
34	11.05
35	11.24

b. DSCF — 3-Digit, 5-Digit Non-Machinable

Maximum Weight (pounds)	DSCF 3-Digit (\$)	DSCF 5-Digit (\$)
1	7.49	4.84
2	7.67	5.02
3	7.85	5.20
4	8.03	5.38
5	8.21	5.56
6	8.39	5.74
7	8.58	5.93
8	8.77	6.12
9	8.96	6.31
10	9.15	6.50
11	9.34	6.69
12	9.52	6.87
13	9.71	7.06
14	9.90	7.25
15	10.09	7.44
16	10.28	7.63
17	10.47	7.82
18	10.66	8.01
19	10.85	8.20
20	11.04	8.39
21	11.23	8.58
22	11.42	8.77
23	11.61	8.96
24	11.80	9.15
25	11.99	9.34

b. DSCF — 3-Digit, 5-Digit Non-Machinable (Continued)

Maximum Weight (pounds)	DSCF 3-Digit (\$)	DSCF 5-Digit (\$)
26	12.18	9.53
27	12.37	9.72
28	12.56	9.91
29	12.75	10.10
30	12.94	10.29
31	13.13	10.48
32	13.32	10.67
33	13.51	10.86
34	13.70	11.05
35	13.89	11.24
36	14.20	11.55
37	14.39	11.74
38	14.58	11.93
39	14.77	12.12
40	14.96	12.31
41	15.15	12.50
42	15.34	12.69
43	15.53	12.88
44	15.72	13.07
45	15.91	13.26
46	16.10	13.45
47	16.29	13.64
48	16.48	13.83
49	16.67	14.02
50	16.86	14.21

b. DSCF — 3-Digit, 5-Digit Non-Machinable (Continued)

Maximum Weight (pounds)	DSCF 3-Digit (\$)	DSCF 5-Digit (\$)
51	17.05	14.40
52	17.24	14.59
53	17.43	14.78
54	17.62	14.97
55	17.81	15.16
56	18.00	15.35
57	18.19	15.54
58	18.38	15.73
59	18.57	15.92
60	18.76	16.11
61	18.95	16.30
62	19.14	16.49
63	19.33	16.68
64	19.52	16.87
65	19.71	17.06
66	19.90	17.25
67	20.09	17.44
68	20.28	17.63
69	20.47	17.82
70	20.66	18.01
Oversized	27.90	27.90

c. Dimensional Weight

Parcels exceeding one cubic foot are priced at the actual weight or the dimensional weight, whichever is greater.

For box-shaped parcels, the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) of the parcel, and dividing by 166.

For irregular-shaped parcels (parcels not appearing box-shaped), the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) at the associated maximum cross-sections of the parcel, dividing by 166, and multiplying by an adjustment factor of 0.785.

d. Oversized Pieces

Regardless of weight, any piece that measures more than 108 inches (but not more than 130 inches) in length plus girth must pay the oversized price. As stated in the Domestic Mail Manual, any piece that is found to be over the 70 pound maximum weight limitation is nonmailable, will not be delivered, and may be subject to the \$100.00 overweight item charge.

e. Forwarding and Returns

Parcel Select pieces that are forwarded on request of the addressee or forwarded or returned on request of the mailer will be subject to the applicable Parcel Select Ground price, plus \$3.00, when forwarded or returned. For customers using Address Correction Service with Shipper Paid Forwarding/Return, and also using an IMpb, the additional fee will be \$2.50.

Destination Entered — DNDC

a. DNDC — Machinable

Maximum Weight (pounds)	DNDC Zones 1 & 2 (\$)	DNDC Zone 3 (\$)	DNDC Zone 4 (\$)	DNDC Zones 5 (\$)
1	6.85	7.66	8.63	10.00
2	7.04	8.05	9.17	10.59
3	7.23	8.45	9.72	11.21
4	7.42	8.86	10.29	11.88
5	7.61	9.27	10.86	12.56
6	7.82	9.68	11.42	13.24
7	8.05	10.09	11.97	13.92
8	8.30	10.53	12.53	14.60
9	8.57	11.01	13.12	15.26
10	8.86	11.49	13.71	15.93
11	9.15	11.97	14.30	16.60
12	9.44	12.45	14.89	17.27
13	9.73	12.93	15.47	17.94
14	10.02	13.41	16.05	18.61
15	10.31	13.89	16.63	19.27
16	10.60	14.37	17.18	19.93
17	10.89	14.85	17.69	20.57
18	11.18	15.33	18.18	21.19
19	11.47	15.81	18.65	21.78
20	11.76	16.29	19.11	22.33
21	12.05	16.77	19.57	22.88
22	12.34	17.25	20.02	23.43
23	12.63	17.73	20.47	23.97
24	12.92	18.21	20.92	24.51
25	13.21	18.67	21.37	25.05

a. DNDC — Machinable (Continued)

Maximum Weight (pounds)	DNDC Zones 1 & 2 (\$)	DNDC Zone 3 (\$)	DNDC Zone 4 (\$)	DNDC Zones 5 (\$)
26	13.50	19.10	21.82	25.59
27	13.79	19.51	22.26	26.11
28	14.08	19.89	22.69	26.63
29	14.37	20.27	23.10	27.08
30	14.66	20.65	23.50	27.50
31	14.95	21.03	23.90	27.92
32	15.24	21.41	24.30	28.33
33	15.53	21.79	24.70	28.74
34	15.82	22.17	25.09	29.15
35	16.11	22.55	25.47	29.56

b. DNDC — Non-Machinable

Maximum Weight (pounds)	DNDC Zones 1 & 2 (\$)	DNDC Zone 3 (\$)	DNDC Zone 4 (\$)	DNDC Zones 5 (\$)
1	9.85	10.66	11.63	13.00
2	10.04	11.05	12.17	13.59
3	10.23	11.45	12.72	14.21
4	10.42	11.86	13.29	14.88
5	10.61	12.27	13.86	15.56
6	10.82	12.68	14.42	16.24
7	11.05	13.09	14.97	16.92
8	11.30	13.53	15.53	17.60
9	11.57	14.01	16.12	18.26
10	11.86	14.49	16.71	18.93
11	12.15	14.97	17.30	19.60
12	12.44	15.45	17.89	20.27
13	12.73	15.93	18.47	20.94
14	13.02	16.41	19.05	21.61
15	13.31	16.89	19.63	22.27
16	13.60	17.37	20.18	22.93
17	13.89	17.85	20.69	23.57
18	14.18	18.33	21.18	24.19
19	14.47	18.81	21.65	24.78
20	14.76	19.29	22.11	25.33
21	15.05	19.77	22.57	25.88
22	15.34	20.25	23.02	26.43
23	15.63	20.73	23.47	26.97
24	15.92	21.21	23.92	27.51
25	16.21	21.67	24.37	28.05

b. DNDC — Non-Machinable (Continued)

Maximum Weight (pounds)	DNDC Zones 1 & 2 (\$)	DNDC Zone 3 (\$)	DNDC Zone 4 (\$)	DNDC Zones 5 (\$)
26	16.50	22.10	24.82	28.59
27	16.79	22.51	25.26	29.11
28	17.08	22.89	25.69	29.63
29	17.37	23.27	26.10	30.08
30	17.66	23.65	26.50	30.50
31	17.95	24.03	26.90	30.92
32	18.24	24.41	27.30	31.33
33	18.53	24.79	27.70	31.74
34	18.82	25.17	28.09	32.15
35	19.11	25.55	28.47	32.56
36	19.59	26.11	28.94	33.08
37	19.93	26.50	29.35	33.48
38	20.26	26.88	29.75	33.89
39	20.58	27.26	30.15	34.29
40	20.89	27.62	30.54	34.67
41	21.19	27.97	30.89	35.05
42	21.48	28.32	31.25	35.43
43	21.78	28.67	31.61	35.81
44	22.08	29.03	31.98	36.19
45	22.38	29.37	32.34	36.57
46	22.68	29.72	32.70	36.95
47	22.98	30.08	33.07	37.33
48	23.27	30.42	33.42	37.71
49	23.56	30.77	33.77	38.08
50	23.85	31.10	34.12	38.45

b. DNDC — Non-Machinable (Continued)

Maximum Weight (pounds)	DNDC Zones 1 & 2 (\$)	DNDC Zone 3 (\$)	DNDC Zone 4 (\$)	DNDC Zones 5 (\$)
51	24.13	31.44	34.47	38.82
52	24.42	31.78	34.81	39.19
53	24.70	32.12	35.15	39.55
54	24.98	32.45	35.48	39.90
55	25.26	32.77	35.82	40.25
56	25.54	33.08	36.15	40.60
57	25.82	33.40	36.49	40.95
58	26.10	33.70	36.82	41.30
59	26.38	34.02	37.16	41.65
60	26.66	34.33	37.50	42.00
61	26.95	34.65	37.84	42.35
62	27.23	34.97	38.18	42.70
63	27.52	35.28	38.52	43.05
64	27.80	35.60	38.85	43.40
65	28.09	35.92	39.19	43.75
66	28.37	36.24	39.52	44.10
67	28.66	36.56	39.86	44.44
68	28.94	36.88	40.19	44.78
69	29.23	37.20	40.53	45.12
70	29.51	37.52	40.86	45.46
Oversized	43.71	58.44	69.65	80.44

c. Dimensional Weight

Parcels exceeding one cubic foot are priced at the actual weight or the dimensional weight, whichever is greater.

For box-shaped parcels, the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) of the parcel, and dividing by 166.

For irregular-shaped parcels (parcels not appearing box-shaped), the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) at the associated maximum cross-sections of the parcel, dividing by 166, and multiplying by an adjustment factor of 0.785.

d. Oversized Pieces

Regardless of weight, any piece that measures more than 108 inches (but not more than 130 inches) in length plus girth must pay the oversized price. As stated in the Domestic Mail Manual, any piece that is found to be over the 70 pound maximum weight limitation is nonmailable, will not be delivered, and may be subject to the \$100.00 overweight item charge.

e. Forwarding and Returns

Parcel Select pieces that are forwarded on request of the addressee or forwarded or returned on request of the mailer will be subject to the applicable Parcel Select Ground price, plus \$3.00, when forwarded or returned. For customers using Address Correction Service with Shipper Paid Forwarding/Return, and also using an IMpb, the additional fee will be \$2.50.

Non-Destination Entered — Parcel Select Ground

a. Parcel Select Ground

Maximum Weight (pounds)	Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)
1	7.01	7.31	7.52	7.63	7.84	7.97	8.15
2	7.59	7.76	8.04	8.55	9.79	10.26	10.79
3	7.75	8.10	8.47	9.29	11.80	13.00	15.05
4	7.85	8.33	8.96	10.08	13.90	15.68	17.56
5	7.95	8.38	9.28	11.35	15.97	18.19	20.56
6	8.06	8.42	9.39	13.97	18.49	21.42	24.35
7	8.33	9.68	9.73	16.03	20.33	23.84	27.08
8	8.39	10.18	11.55	17.54	22.44	26.41	30.64
9	9.25	10.58	12.05	18.84	24.52	28.73	34.27
10	9.65	11.04	12.15	20.46	26.55	31.63	37.27
11	11.65	14.04	15.09	23.61	30.62	37.05	42.80
12	12.40	14.97	17.66	25.34	33.54	40.10	46.10
13	13.07	15.86	18.51	26.73	35.55	41.25	46.95
14	13.77	16.76	19.52	28.33	37.60	43.50	49.40
15	14.32	17.67	20.49	29.82	39.40	45.10	50.80
16	14.97	18.82	21.84	31.63	41.65	47.65	53.85
17	15.46	19.71	22.90	33.21	43.95	50.25	56.75
18	15.78	20.33	23.96	34.73	46.20	52.90	59.80
19	16.15	20.82	24.52	35.66	47.25	54.00	60.95
20	16.81	21.15	25.02	36.33	48.90	56.40	64.10
21	17.57	21.67	25.61	36.99	49.75	57.50	65.55
22	18.14	22.27	26.48	37.74	50.95	59.00	67.15
23	18.70	22.81	27.13	38.44	51.72	59.89	68.35
24	19.48	23.80	28.70	39.97	52.85	61.50	70.15
25	20.25	24.66	30.55	41.34	53.65	62.80	71.45

a. Parcel Select Ground (Continued)

Maximum Weight (pounds)	Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)
26	21.51	26.47	33.79	43.58	54.99	64.60	73.70
27	22.82	27.69	35.88	47.55	55.75	66.24	76.45
28	23.53	28.06	36.91	48.81	56.53	67.83	79.50
29	24.27	28.35	37.92	49.47	57.50	69.43	81.75
30	25.00	28.77	38.82	50.15	59.15	71.00	83.50
31	25.72	29.06	39.44	50.80	60.03	72.61	85.45
32	26.02	29.69	40.10	51.40	60.83	74.22	87.00
33	26.43	30.52	41.11	52.09	62.04	75.79	88.80
34	26.68	31.33	42.17	53.23	63.55	77.39	90.55
35	26.98	32.08	42.78	54.37	65.29	78.98	91.95
36	27.32	33.03	43.35	55.56	66.97	80.08	93.60
37	27.61	33.65	43.98	56.56	68.76	81.13	95.20
38	27.89	34.48	44.54	57.70	70.71	82.08	96.80
39	28.16	35.30	45.06	58.91	72.42	84.30	98.30
40	28.46	36.05	45.65	60.15	73.60	86.23	99.70
41	28.77	36.66	46.14	60.69	74.87	88.11	101.30
42	28.99	36.94	46.55	61.72	76.21	89.34	102.60
43	29.33	37.22	46.97	62.75	78.07	90.48	103.70
44	29.54	37.49	47.38	63.77	79.33	91.58	105.20
45	29.73	37.76	47.81	64.81	80.23	92.59	106.50
46	30.00	38.04	48.23	65.84	81.14	93.61	107.75
47	30.22	38.31	48.64	66.87	82.00	94.70	109.05
48	30.48	38.59	49.06	67.89	83.07	95.63	110.15
49	30.72	38.85	49.48	68.92	84.23	96.65	111.25
50	30.85	39.12	49.90	69.96	85.43	97.90	112.45

a. Parcel Select Ground (Continued)

Maximum Weight (pounds)	Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)
51	31.31	39.40	50.29	71.16	86.62	99.33	113.55
52	31.78	39.68	50.71	71.67	87.47	100.86	114.85
53	32.38	39.94	51.13	72.26	88.22	102.54	116.35
54	32.86	40.23	51.54	72.89	88.86	104.04	118.05
55	33.38	40.49	51.96	73.35	89.61	105.72	119.60
56	33.85	40.77	52.38	73.91	90.21	107.20	120.85
57	34.39	41.04	52.80	74.35	90.91	107.90	121.70
58	34.92	41.31	53.21	74.83	91.46	108.90	122.75
59	35.43	41.59	53.62	75.29	91.98	109.60	123.65
60	35.88	41.86	54.03	75.71	92.45	110.30	124.45
61	36.47	42.12	54.45	76.09	92.97	111.60	126.20
62	36.92	42.40	54.86	76.43	93.41	112.96	128.30
63	37.60	42.68	55.29	76.84	93.95	113.51	130.40
64	37.93	42.94	55.70	77.18	94.38	114.04	132.45
65	38.49	43.22	56.13	77.42	94.66	114.62	134.45
66	39.00	43.50	56.53	77.77	95.14	114.97	136.60
67	39.59	43.77	57.50	78.05	95.45	115.44	138.35
68	40.06	44.04	58.23	78.27	96.67	116.05	139.85
69	40.61	44.32	58.98	78.50	97.85	116.60	141.35
70	41.04	44.59	59.92	78.75	99.05	117.03	142.95
Oversized	80.00	101.70	123.45	144.90	166.60	188.25	210.00

b. Dimensional Weight

Parcels exceeding one cubic foot are priced at the actual weight or the dimensional weight, whichever is greater.

For box-shaped parcels, the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) of the parcel, and dividing by 166.

For irregular-shaped parcels (parcels not appearing box-shaped), the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) at the associated maximum cross-sections of the parcel, dividing by 166, and multiplying by an adjustment factor of 0.785.

c. Oversized Pieces

Regardless of weight, any piece that measures more than 108 inches (but not more than 130 inches) in length plus girth must pay the oversized price. As stated in the Domestic Mail Manual, any piece that is found to be over the 70 pound maximum weight limitation is nonmailable, will not be delivered, and may be subject to the \$100.00 overweight item charge.

d. Forwarding and Returns

Parcel Select pieces that are forwarded on request of the addressee or forwarded or returned on request of the mailer will be subject to the applicable Parcel Select Ground price, plus \$3.00, when forwarded or returned. For customers using Address Correction Service with Shipper Paid Forwarding/Return, and also using an IMpb, the additional fee will be \$2.50.

Parcel Select Lightweight

Maximum Weight (ounces)	Entry Point/Sortation Level							
	DDU/ 5-Digit (\$)	DSCF/ 5-Digit (\$)	DNDC/ 5-Digit (\$)	DSCF/ SCF (\$)	DNDC/ SCF (\$)	DNDC/ NDC (\$)	None/ NDC (\$)	None/ Mixed NDC/Single -Piece (\$)
1	2.15	2.55	2.85	3.05	3.28	3.70	4.13	4.45
2	2.15	2.55	2.85	3.05	3.28	3.70	4.13	4.45
3	2.15	2.55	2.85	3.05	3.28	3.70	4.13	4.45
4	2.15	2.55	2.85	3.05	3.28	3.70	4.13	4.45
5	2.17	2.60	2.95	3.16	3.50	3.93	4.43	4.80
6	2.17	2.60	2.95	3.16	3.50	3.93	4.43	4.80
7	2.17	2.60	2.95	3.16	3.50	3.93	4.43	4.80
8	2.17	2.60	2.95	3.16	3.50	3.93	4.43	4.80
9	2.32	2.84	3.28	3.51	3.95	4.43	5.00	5.43
10	2.32	2.84	3.28	3.51	3.95	4.43	5.00	5.43
11	2.32	2.84	3.28	3.51	3.95	4.43	5.00	5.43
12	2.32	2.84	3.28	3.51	3.95	4.43	5.00	5.43
13	2.49	3.10	3.63	4.01	4.43	4.97	5.61	6.10
14	2.49	3.10	3.63	4.01	4.43	4.97	5.61	6.10
15	2.49	3.10	3.63	4.01	4.43	4.97	5.61	6.10
15.999	2.49	3.10	3.63	4.01	4.43	4.97	5.61	6.10

Forwarding and Return Service

If Forwarding Service is used in conjunction with electronic Address Correction Service, forwarded Parcel Select Lightweight parcels pay \$4.75 per piece. All other Parcel Select Lightweight pieces requesting Forwarding and Return Service that are returned are charged the appropriate First-Class Package Service or Priority Mail price for the piece multiplied by a factor of 2.472.

Pickup On Demand Service

Add \$25.00 for each Pickup On Demand stop.

IMpb Noncompliance Fee

Add \$0.25 for each IMpb-noncompliant parcel paying commercial prices, unless the eVS Unmanifested Fee was already assessed on that parcel.

eVS Unmanifested Fee

Add \$0.25 for each unmanifested parcel paying commercial prices, unless the IMpb Noncompliance Fee was already assessed on that parcel.

2120 Parcel Return Service

* * *

2120.6 Prices

RSCF Entered

a. Machinable RSCF

Maximum Weight (pounds)	RSCF (\$)
1	4.02
2	4.55
3	4.88
4	5.25
5	5.65
6	6.20
7	6.63
8	7.19
9	7.68
10	8.21
11	8.69
12	9.30
13	9.72
14	10.06
15	10.42
16	10.77
17	11.17
18	11.48
19	11.78
20	12.18
21	12.50
22	12.87
23	13.13
24	13.53
25	13.82

a. Machinable RSCF (Continued)

Maximum Weight (pounds)	RSCF (\$)
26	14.26
27	14.56
28	14.87
29	15.19
30	15.47
31	15.81
32	16.12
33	16.39
34	16.81
35	17.11

b. Nonmachinable RSCF

Maximum Weight (pounds)	RSCF (\$)
1	7.02
2	7.55
3	7.88
4	8.25
5	8.65
6	9.20
7	9.63
8	10.19
9	10.68
10	11.21
11	11.69
12	12.30
13	12.72
14	13.06
15	13.42
16	13.77
17	14.17
18	14.48
19	14.78
20	15.18
21	15.50
22	15.87
23	16.13
24	16.53
25	16.82

b. Nonmachinable RSCF (Continued)

Maximum Weight (pounds)	RSCF (\$)
26	17.26
27	17.56
28	17.87
29	18.19
30	18.47
31	18.81
32	19.12
33	19.39
34	19.81
35	20.11
36	20.43
37	20.54
38	20.85
39	21.00
40	21.28
41	21.55
42	21.70
43	22.02
44	22.29
45	22.57
46	22.83
47	23.03
48	23.42
49	23.77
50	23.99

b. Nonmachinable RSCF (Continued)

Maximum Weight (pounds)	RSCF (\$)
51	24.38
52	24.65
53	25.05
54	25.39
55	25.61
56	26.00
57	26.31
58	26.61
59	26.94
60	27.10
61	27.50
62	27.80
63	28.15
64	28.45
65	28.77
66	28.97
67	29.43
68	29.64
69	30.01
70	30.14
Oversized	43.58

c. Balloon Price

RSCF entered pieces exceeding 84 inches in length and girth combined, but not more than 108 inches, and weighing less than 20 pounds are subject to a price equal to that for a 20-pound parcel for the zone to which the parcel is addressed.

d. Oversized Pieces

Regardless of weight, any piece that measures more than 108 inches (but not more than 130 inches) in length plus girth must pay the oversized price. As stated in the Domestic Mail Manual, any piece that is found to be over the 70 pound maximum weight limitation is nonmailable, will not be delivered, and may be subject to the \$100.00 overweight item charge.

RDU Entered

a. Machinable RDU

Maximum Weight (pounds)	RDU (\$)
1	3.21
2	3.30
3	3.38
4	3.49
5	3.57
6	3.68
7	3.76
8	3.84
9	3.95
10	4.03
11	4.14
12	4.22
13	4.33
14	4.41
15	4.49
16	4.60
17	4.68
18	4.79
19	4.87
20	4.98
21	5.06
22	5.14
23	5.25
24	5.33
25	5.44

a. Machinable RDU (Continued)

Maximum Weight (pounds)	RDU (\$)
26	5.48
27	5.57
28	5.67
29	5.76
30	5.86
31	5.96
32	6.03
33	6.13
34	6.22
35	6.32

b. Nonmachinable RDU

Maximum Weight (pounds)	RDU (\$)
1	3.21
2	3.30
3	3.38
4	3.49
5	3.57
6	3.68
7	3.76
8	3.84
9	3.95
10	4.03
11	4.14
12	4.22
13	4.33
14	4.41
15	4.49
16	4.60
17	4.68
18	4.79
19	4.87
20	4.98
21	5.06
22	5.14
23	5.25
24	5.33
25	5.44

b. Nonmachinable RDU (Continued)

Maximum Weight (pounds)	RDU (\$)
26	5.48
27	5.57
28	5.67
29	5.76
30	5.86
31	5.96
32	6.03
33	6.13
34	6.22
35	6.32
36	6.41
37	6.51
38	6.59
39	6.68
40	6.78
41	6.87
42	6.97
43	7.06
44	7.14
45	7.24
46	7.33
47	7.44
48	7.52
49	7.63
50	7.69

b. Nonmachinable RDU (Continued)

Maximum Weight (pounds)	RDU (\$)
51	7.80
52	7.90
53	7.99
54	8.09
55	8.18
56	8.26
57	8.35
58	8.45
59	8.55
60	8.64
61	8.74
62	8.81
63	8.91
64	9.00
65	9.10
66	9.19
67	9.27
68	9.37
69	9.46
70	9.56
Oversized	13.27

c. Oversized Pieces

Regardless of weight, any piece that measures more than 108 inches (but not more than 130 inches) in length plus girth must pay the oversized price. As stated in the Domestic Mail Manual, any piece that is found to be over the 70 pound maximum weight limitation is nonmailable, will not be delivered, and may be subject to the \$100.00 overweight item charge.

IMpb Noncompliance Fee

Add \$0.25 for each IMpb-noncompliant parcel paying commercial prices.

2125 First-Class Package Service

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2125.6 Prices

Commercial

Maximum Weight (ounces)	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)
1	3.01	3.03	3.06	3.12	3.22	3.35	3.49
2	3.01	3.03	3.06	3.12	3.22	3.35	3.49
3	3.01	3.03	3.06	3.12	3.22	3.35	3.49
4	3.01	3.03	3.06	3.12	3.22	3.35	3.49
5	3.46	3.49	3.51	3.57	3.58	3.69	3.85
6	3.46	3.49	3.51	3.57	3.58	3.69	3.85
7	3.46	3.49	3.51	3.57	3.58	3.69	3.85
8	3.46	3.49	3.51	3.57	3.58	3.69	3.85
9	4.04	4.09	4.12	4.20	4.38	4.53	4.68
10	4.04	4.09	4.12	4.20	4.38	4.53	4.68
11	4.04	4.09	4.12	4.20	4.38	4.53	4.68
12	4.04	4.09	4.12	4.20	4.38	4.53	4.68
13	5.19	5.23	5.27	5.42	5.66	5.81	5.98
14	5.19	5.23	5.27	5.42	5.66	5.81	5.98
15	5.19	5.23	5.27	5.42	5.66	5.81	5.98
15.999	5.19	5.23	5.27	5.42	5.66	5.81	5.98

Retail¹

Maximum Weight (ounces)	Local, Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)
1	4.00	4.10	4.15	4.20	4.25	4.30	4.45
2	4.00	4.10	4.15	4.20	4.25	4.30	4.45
3	4.00	4.10	4.15	4.20	4.25	4.30	4.45
4	4.00	4.10	4.15	4.20	4.25	4.30	4.45
5	4.80	4.85	4.90	4.95	5.00	5.10	5.20
6	4.80	4.85	4.90	4.95	5.00	5.10	5.20
7	4.80	4.85	4.90	4.95	5.00	5.10	5.20
8	4.80	4.85	4.90	4.95	5.00	5.10	5.20
9	5.50	5.55	5.60	5.65	5.70	5.85	5.95
10	5.50	5.55	5.60	5.65	5.70	5.85	5.95
11	5.50	5.55	5.60	5.65	5.70	5.85	5.95
12	5.50	5.55	5.60	5.65	5.70	5.85	5.95
13	6.25	6.30	6.40	6.50	6.55	6.65	6.75

Notes

1. A handling charge of \$0.01 per piece applies to foreign-origin, inbound direct entry mail tendered by foreign postal operators, subject to the terms of an authorization arrangement.

Irregular Parcel Surcharge

Add \$0.25 for each irregularly shaped parcel (such as rolls, tubes, and triangles).

IMpb Noncompliance Fee

Add \$0.25 for each IMpb-noncompliant parcel paying commercial prices, unless the eVS Unmanifested Fee was already assessed on that parcel.

eVS Unmanifested Fee

Add \$0.25 for each unmanifested parcel paying commercial prices, unless the IMpb Noncompliance Fee was already assessed on that parcel.

Pickup On Demand Service

Add \$25.00 for each Pickup On Demand stop.

2135 USPS Retail Ground

* * *

2135.6 Prices

USPS Retail Ground¹

Maximum Weight (pounds)	Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)
1	7.70	8.10	8.25	8.40	8.70	8.95	9.55
2	8.55	8.85	10.10	10.95	11.75	12.75	13.80
3	9.05	9.90	11.10	12.60	13.30	15.55	17.60
4	9.55	10.75	11.75	13.20	15.80	18.35	20.95
5	10.60	11.50	12.50	13.90	17.35	20.85	24.35
6	11.40	12.00	13.30	16.05	20.10	24.15	28.15
7	12.40	13.60	16.00	18.05	22.50	26.95	31.45
8	12.80	15.05	17.75	20.85	25.65	30.35	35.15
9	13.30	16.25	19.70	23.80	28.95	34.10	39.20
10	14.15	17.45	21.20	25.40	30.80	36.20	41.50
11	15.55	19.20	23.40	27.20	33.15	39.15	45.20
12	16.90	20.60	25.15	29.15	35.55	42.10	48.50
13	17.90	21.75	26.55	30.85	37.00	43.25	49.35
14	19.00	23.20	28.25	32.70	39.05	45.50	51.80
15	19.70	24.50	29.85	34.65	40.85	47.10	53.20
16	20.35	25.85	31.50	36.55	43.10	49.65	56.25
17	21.30	27.20	33.15	38.45	45.40	52.25	59.15
18	21.65	28.15	34.50	40.40	47.65	54.90	62.20
19	22.30	28.85	35.25	41.40	48.70	56.00	63.35
20	23.20	29.20	35.85	42.25	50.35	58.40	66.50
21	24.00	29.55	36.35	42.80	51.20	59.50	67.95
22	24.55	30.25	37.25	43.85	52.40	61.00	69.55
23	25.15	30.85	37.85	44.60	53.40	62.05	70.75
24	25.70	31.50	38.75	45.50	54.55	63.60	72.55
25	26.00	32.00	40.30	46.85	55.80	64.80	73.85

USPS Retail Ground (Continued)

Maximum Weight (pounds)	Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)
26	27.00	32.60	41.80	47.75	57.15	66.60	76.10
27	27.85	33.10	43.05	50.20	59.70	69.30	78.85
28	28.70	33.50	44.35	51.50	61.60	71.75	81.90
29	29.55	33.90	45.45	52.30	62.85	73.55	84.15
30	30.45	34.35	46.55	53.00	63.95	74.95	85.90
31	31.35	34.70	47.35	53.80	65.15	76.50	87.85
32	31.70	35.50	48.10	54.30	66.00	77.70	89.40
33	32.25	36.40	49.30	55.05	67.10	79.10	91.20
34	32.50	37.40	50.55	56.15	68.45	80.70	92.95
35	32.85	38.30	51.15	57.35	69.70	82.05	94.35
36	33.20	39.40	51.90	58.70	71.20	83.60	96.00
37	33.50	40.05	52.65	59.70	72.40	85.00	97.60
38	33.90	41.10	53.30	60.85	73.65	86.40	99.20
39	34.25	42.05	54.00	62.15	75.00	87.85	100.70
40	34.65	42.90	54.70	63.50	76.30	89.20	102.10
41	34.95	43.75	55.35	64.10	77.30	90.50	103.70
42	35.20	44.50	55.90	65.40	78.55	91.75	105.00
43	35.70	45.25	56.40	66.80	79.90	93.00	106.10
44	35.90	46.00	57.15	68.20	81.30	94.40	107.60
45	36.15	46.50	57.50	69.80	82.80	95.85	108.90
46	36.40	46.80	58.15	71.05	84.05	97.15	110.15
47	36.75	47.25	58.70	72.75	85.60	98.55	111.45
48	37.10	47.65	59.25	74.10	86.90	99.70	112.55
49	37.30	47.95	59.70	75.45	88.20	100.90	113.65
50	37.45	48.25	60.15	76.95	89.55	102.20	114.85

USPS Retail Ground (Continued)

Maximum Weight (pounds)	Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)
51	37.60	48.75	60.70	78.20	90.85	103.35	115.95
52	38.10	49.05	61.10	78.80	91.65	104.45	117.25
53	38.75	49.35	61.45	79.45	92.50	105.60	118.75
54	39.20	49.55	61.90	80.05	93.55	106.95	120.45
55	39.90	49.90	62.25	80.65	94.45	108.20	122.00
56	40.45	50.25	62.60	81.20	95.25	109.20	123.25
57	41.05	50.40	62.95	81.60	95.80	109.90	124.10
58	41.70	50.65	63.40	82.25	96.60	110.90	125.15
59	42.35	50.85	63.70	82.70	97.15	111.60	126.05
60	42.90	51.05	64.30	83.10	97.70	112.30	126.85
61	43.55	51.35	65.45	83.55	98.60	113.60	128.60
62	44.00	51.45	66.25	84.05	99.60	115.15	130.70
63	44.85	51.70	67.40	84.45	100.55	116.65	132.80
64	45.30	53.30	68.35	84.85	101.55	118.15	134.85
65	45.90	53.45	69.25	85.05	102.35	119.60	136.85
66	46.50	53.65	70.40	85.50	103.40	121.15	139.00
67	47.25	53.75	71.60	85.85	104.20	122.50	140.75
68	47.80	53.85	72.45	86.00	104.80	123.50	142.25
69	48.40	53.90	73.35	86.25	105.40	124.60	143.75
70	49.00	54.10	74.55	86.50	106.10	125.75	145.35
Oversized	80.00	101.70	123.45	144.90	166.60	188.25	210.00

Notes

1. Except for oversized pieces, the Zone 1-4 prices are applicable only to parcels containing hazardous or other material not permitted to travel by air transportation. All other parcels for shipment in Zones 1-4 will be converted to Priority Mail service.

Limited Overland Routes

Pieces delivered to or from designated intra-Alaska ZIP Codes not connected by overland routes are eligible for the following prices.

Maximum Weight (pounds)	Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)
1	7.30	7.65	8.00	8.25
2	8.05	8.45	9.10	9.65
3	8.30	9.40	10.35	12.55
4	8.80	9.95	11.00	13.10
5	9.35	10.25	11.60	13.60
6	9.55	10.80	12.20	14.60
7	9.85	11.25	12.95	15.60
8	10.20	11.80	13.65	16.65
9	10.60	12.50	14.40	17.75
10	10.90	12.85	15.05	18.70
11	11.20	13.20	15.65	19.55
12	11.55	13.75	16.35	20.55
13	11.90	14.20	17.10	21.45
14	12.25	14.80	17.75	22.40
15	12.65	15.30	18.50	23.45
16	13.00	15.80	19.20	24.40
17	13.35	16.35	19.90	25.35
18	13.65	16.90	20.60	26.35
19	14.05	17.35	21.20	27.15
20	14.40	17.80	21.80	28.00
21	14.75	18.30	22.40	28.80
22	15.10	18.75	23.00	29.60
23	15.45	19.25	23.60	30.50
24	15.80	19.70	24.25	31.25
25	16.15	20.20	25.00	32.15

Limited Overland Routes (Continued)

Maximum Weight (pounds)	Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)
26	16.45	20.65	25.70	32.95
27	16.85	21.15	26.35	34.00
28	17.20	21.60	27.05	34.85
29	17.60	22.05	27.70	35.70
30	18.10	22.55	28.30	36.50
31	18.65	22.95	29.00	37.25
32	18.95	23.50	29.55	38.05
33	19.35	23.95	30.25	38.85
34	19.85	24.45	30.85	39.70
35	20.45	24.95	31.50	40.55
36	20.70	25.45	32.10	41.40
37	21.15	25.90	32.70	42.25
38	21.60	26.40	33.35	43.15
39	22.10	26.90	33.95	44.00
40	22.55	27.35	34.70	44.90
41	23.00	27.90	35.30	45.65
42	23.35	28.35	35.90	46.55
43	23.80	28.90	36.45	47.35
44	24.10	29.35	37.10	48.20
45	24.45	29.75	37.65	49.15
46	24.80	30.25	38.30	50.05
47	25.20	30.70	38.90	51.00
48	25.50	31.20	39.45	51.80
49	25.90	31.65	40.05	52.75
50	26.30	32.05	40.60	53.65

Limited Overland Routes (Continued)

Maximum Weight (pounds)	Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)
51	26.65	32.55	41.25	54.50
52	27.05	33.05	41.80	55.25
53	27.35	33.45	42.40	56.05
54	27.65	33.90	42.95	56.85
55	28.10	34.30	43.55	57.60
56	28.45	34.80	44.15	58.40
57	28.85	35.25	44.70	59.15
58	29.20	35.70	45.30	59.90
59	29.55	36.15	45.90	60.65
60	29.90	36.60	46.50	61.45
61	30.30	37.05	47.10	62.15
62	30.65	37.50	47.80	63.00
63	31.05	38.00	48.45	63.70
64	31.40	38.40	49.10	64.45
65	31.75	38.85	49.65	65.15
66	32.10	39.25	50.35	65.90
67	32.50	39.75	50.95	66.60
68	32.90	40.15	51.60	67.35
69	33.20	40.60	52.25	68.05
70	33.60	41.75	53.30	68.85
Oversized	49.10	67.30	74.15	89.85

Balloon Price

Limited Overland Routes pieces exceeding 84 inches in length and girth combined (but not more than 108 inches) and weighing less than 20 pounds are subject to a price equal to that for a 20-pound parcel for the zone to which the parcel is addressed.

Oversized Pieces

Regardless of weight, any piece that measures more than 108 inches (but not more than 130 inches) in length plus girth must pay the oversized price. As stated in the Domestic Mail Manual, any piece that is found to be over the 70 pound maximum weight limitation is nonmailable, will not be delivered, and may be subject to the \$100.00 overweight item charge.

Pickup On Demand Service

Add \$25.00 for each Pickup On Demand stop.

Dimensional Weight

In Zones 1-8, parcels exceeding one cubic foot are priced at the actual weight or the dimensional weight, whichever is greater.

For box-shaped parcels, the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) of the parcel, and dividing by 166.

For irregular-shaped parcels (parcels not appearing box-shaped), the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) at the associated maximum cross-sections of the parcel, dividing by 166, and multiplying by an adjustment factor of 0.785.

These dimensional weight rules do not apply to the Limited Overland Routes price category.

IMpb Noncompliance Fee

Add \$0.25 for each IMpb-noncompliant parcel paying commercial prices.

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Part IV

Securities and Exchange Commission

Notice of Application for the Amendment of Substituted Compliance Determination Regarding Security-Based Swap Entities Subject to Regulation in the Federal Republic of Germany; Proposed Amendments to Order; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92647; File No. S7–08–21]

Notice of Application for the Amendment of Substituted Compliance Determination Regarding Security-Based Swap Entities Subject to Regulation in the Federal Republic of Germany; Proposed Amendments to Order

August 12, 2021.

AGENCY: Securities and Exchange Commission.

ACTION: Notice of application for amended substituted compliance determination; proposed amendments to order.

SUMMARY: The Securities and Exchange Commission (“Commission”) is soliciting public comment on an application by the Bundesanstalt für Finanzdienstleistungsaufsicht (“BaFin”), pursuant to rule 3a71–6 under the Securities Exchange Act of 1934 (“Exchange Act”), requesting that the Commission amend an existing substituted compliance Order for Germany to extend the Order to nonbank capital and margin requirements (the “Amended Application”). The Commission also is soliciting comment on proposed amendments to the Order and is proposing to amend and restate the Order (the “proposed Amended Order”).

DATES: Submit comments on or before September 13, 2021.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s internet comment form (<https://www.sec.gov/rules/submitcomments.htm>); or
- Send an email to rule-comments@sec.gov. Please include File Number S7–08–21 on the subject line.

Paper Comments

- Send paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–08–21. 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/other.shtml>). Typically, comments

are also available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NW, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Due to pandemic conditions, however, access to the Commission’s public reference room is not permitted at this time. All comments received will be posted without change. Persons submitting comments are cautioned that the Commission does not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Carol M. McGee, Assistant Director, at 202–551–5870, Office of Derivatives Policy, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: The Commission is soliciting public comment on the Amended Application. The Commission also is proposing to amend and restate the Order in certain other ways, and is soliciting comment on the proposed Amended Order set forth in Attachment A.

I. Introduction

Rule 3a71–6 under the Exchange Act provides a framework whereby non-U.S. security-based swap dealers and major security-based swap participants (“SBS Entities”) may satisfy certain requirements under Exchange Act section 15F by complying with comparable regulatory requirements of a foreign jurisdiction. Substituted compliance is intended to promote efficiency and competition within the security-based swap market by helping to address potential duplication and inconsistency between relevant U.S. and foreign requirements, making it possible for SBS Entities to leverage their existing systems and practices to comply with relevant Exchange Act requirements in conjunction with their compliance with relevant foreign requirements.¹

Pursuant to rule 3a71–6, in December 2020 the Commission issued a substituted compliance Order to provide that German SBS Entities may use substituted compliance with conditions to satisfy certain requirements under the Exchange Act related to risk control, internal supervision and compliance, counterparty protection, and books and records.² That Order (and the

underlying application from BaFin) did not address substituted compliance for Exchange Act capital and margin requirements applicable to SBS Entities without a prudential regulator.³

In the Commission’s preliminary view, certain developments warrant modifications to the substituted compliance Order for Germany. First, since finalizing the Order, the Commission has finalized substituted compliance orders for SBS Entities subject to regulation in the French Republic (“France”) ⁴ and the United Kingdom (“UK”).⁵ When finalizing the French and UK Orders, the Commission had the benefit of additional public comment, some of which also referenced the Order.⁶ Particularly given

³ Section 15F(e)(1)(B) of the Exchange Act provides that SBS Entities for which there is not a prudential regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Commission shall by rule or regulation prescribe. The term “prudential regulator” is defined in Section 1(a)(39) of the Commodity Exchange Act (7 U.S.C. 1(a)(39)) and that definition is incorporated by reference in Section 3(a)(74) of the Exchange Act. Pursuant to the definition, the Board of Governors of the Federal Reserve System (“Federal Reserve”), the Office of the Comptroller of the Currency (“OCC”), the Federal Deposit Insurance Corporation (“FDIC”), the Farm Credit Administration, or the Federal Housing Finance Agency is the “prudential regulator” of an SBS Entity if the entity is directly supervised by that agency. The Commission adopted Exchange Act rules 18a–1 through 18a–1d (capital) and 18a–3 (margin) pursuant to Section 15F(e)(1)(B) of the Exchange Act. See Exchange Act Release No. 86175 (June 21, 2019) 84 FR 43872, 43879 (Aug. 22, 2019) (“Capital and Margin Adopting Release”).

⁴ Exchange Act Release No. 92494 (July 23, 2021), 86 FR 41612 (Aug. 2, 2021) (“French Order”). See also Exchange Act No. 90766 (Dec. 22, 2020), 85 FR 85720 (Dec. 29, 2020) (“French Substituted Compliance Notice and Proposed Order”); Exchange Act Release No. 91477 (Apr. 5, 2021), 86 FR 18341 (Apr. 8, 2021) (“Reopening Release”).

⁵ Exchange Act Release No. 92529 (July 30, 2021), 86 FR 43318 (August 6, 2021) (“UK Order”). See also Exchange Act Release No. 91476 (Apr. 5, 2021), 86 FR 18378 (Apr. 8, 2021) (“UK Substituted Compliance Notice and Proposed Order”).

⁶ See, e.g., Letter from Kyle Brandon, Managing Director, Head of Derivative Policy, SIFMA (Jan. 25, 2021) (“SIFMA Letter I”); Letter from Wim Mijs, Chief Executive Officer, European Banking Federation (Jan. 25, 2021) (“EBF Letter I”) (generally supporting the SIFMA Letter I); Letter from Etienne Barel, Deputy Chief Executive Officer, French Banking Federation (Jan. 25, 2021) (“FBF Letter I”); Letter from Kyle Brandon, Managing Director, Head of Derivative Policy, SIFMA (May 3, 2021) (“SIFMA Letter II”); Letter from Wim Mijs, Chief Executive Officer, European Banking Federation (May 3, 2021) (“EBF Letter II”); Letter from Etienne Barel, Deputy Chief Executive Officer, French Banking Federation (May 3, 2021) (“FBF Letter II”); Letter from Americans for Financial Reform Education Fund (May 3, 2021) (“AFREF Letter”); Letter from Dennis M. Kelleher, President and CEO, Stephen Hall, Legal Director and Securities Specialist, and Jason Grimes, Senior Counsel, Better Markets, Inc. (May 3, 2021) (“Better Markets Letter”). Comments may be found on the Commission’s website at: <https://www.sec.gov/comments/s7-22-20/s72220.htm>.

¹ Exchange Act Release No. 90765 (Dec. 22, 2020), 85 FR 85686, 85687 (Dec. 29, 2020) (“Order”).

² Id. at 85689–97.

substantial similarity of the three regimes, the Commission believes that modifications to the Order may be necessary for consistency. The Commission is therefore proposing to amend the Order to align with the French and UK orders where appropriate.

Moreover, BaFin's Amended Application requests that the Commission extend the Order to also provide for substituted compliance for the capital requirements of Exchange Act Section 15F(e) and Exchange Act rules 18a-1 through 18a-1d (collectively, "Exchange Act Rule 18a-1"), the margin requirements Exchange Act Section 15F(e) and Exchange Act rule 18a-3, and related recordkeeping, reporting, notification, and securities count requirements.⁷ As discussed in parts IV and VII below, the Commission is proposing to amend the Order to conditionally permit German SBS Entities to comply with these requirements via substituted compliance.⁸

II. Scope of Substituted Compliance and Additional General Conditions

A. Scope of Substituted Compliance

For entity-level Exchange Act requirements,⁹ a Covered Entity must

choose either to apply substituted compliance pursuant to the Order with respect to all security-based swap business subject to the relevant German and EU requirements or to comply directly with the Exchange Act with respect to all such business; a Covered Entity may not choose to apply substituted compliance for some of the business subject to the relevant German or EU requirements and comply directly with the Exchange Act for another part of the business that is subject to the relevant German and EU requirements. Additionally, for entity-level Exchange Act requirements, if the Covered Entity also has security-based swap business that is not subject to the relevant German requirements, the Covered Entity must either comply directly with the Exchange Act for that business or comply with the terms of another applicable substituted compliance order.¹⁰ For transaction-level Exchange Act requirements,¹¹ a Covered Entity may decide to apply substituted compliance for some of its security-based swap business and to comply directly with the Exchange Act (or comply with another applicable substituted compliance order) for other parts of its security-based swap business.

B. Proposed Revision of General Condition Regarding Notice

The Commission also is proposing to modify the Order's general condition requiring that Covered Entities provide the Commission with written notice of their intent to rely on substituted compliance. To promote clarity in the notice regarding the Covered Entity's intended use of substituted compliance, the Commission is proposing to amend the general condition to require that the notice identify each specific substituted compliance determination for which the Covered Entity intends to apply substituted compliance.¹² The

modification would be consistent with the conditions for notification included in the Commission's other substituted compliance orders.¹³

would make a technical modification to the general condition to clarify that the notice must be sent to the Commission in the manner specified on the Commission's website (in lieu of the condition's current reference to an email address specified on that website).

¹³ See French Order, 86 FR 41658; UK Order, 86 FR 43371. As explained in the French and UK Orders, under the proposed amended notification provision, if a Covered Entity intends to rely on all the substituted compliance determinations in a given paragraph of the Order, it could cite that paragraph in the notice. For example, if the Covered Entity intends to rely on the capital and margin determinations in paragraph (c) of the proposed Amended Order, it would indicate in the notice that it is relying on the determinations in paragraph (c). However, if the Covered Entity intends to rely on the margin determination but not the capital determination, it would need to indicate in the notice that it is relying on paragraph (c)(2) of the proposed Amended Order (the margin determination). In this case, paragraph (c)(1) of the proposed Amended Order (the capital determination) would be excluded from the notice and the Covered Entity would need to comply with the Exchange Act capital requirements. Further, as discussed below in part VII.B.1, the amended recordkeeping and reporting determinations in the proposed Amended Order have been structured to provide Covered Entities with a high level of flexibility in selecting specific requirements within those rules for which they want to rely on substituted compliance. For example, paragraph (f)(1)(i) of the proposed Amended Order sets forth the Commission's substituted compliance preliminary determinations with respect to the requirements of Exchange Act rule 18a-5, 17 CFR 240.18a-5. These preliminary determinations are set forth in paragraphs (f)(1)(i)(A) through (O) of the proposed Amended Order. If a Covered Entity intends to rely on some but not all of the preliminary determinations, it would need to identify in the notice the specific preliminary determinations in this paragraph it intends to rely on (e.g., paragraphs (f)(1)(i)(A), (B), (C), (D), (G), (H), (I), and (O)). For any determinations excluded from the notice, the Covered Entity would need to comply with the Exchange Act rule 18a-5 requirement. Finally, a Covered Entity would be able to apply substituted compliance at the transaction level (rather than the entity level) for certain counterparty protection requirements and the recordkeeping requirements that are linked to them. In this case, the notice would need to indicate the class of transactions (e.g., transactions with UK counterparties) for which the Covered Entity is applying substituted compliance with respect to the Exchange Act counterparty protection requirements and linked recordkeeping requirements. Similarly, as discussed above, a Covered Entity would be able to apply substituted compliance for entity-level Exchange Act requirements to all of its security-based swap business that is eligible for substituted compliance under the proposed Amended Order, and may either comply directly with the Exchange Act or apply substituted compliance under another applicable order for its security-based swap business that is not eligible for substituted compliance under the proposed Amended Order. In this case, the notice would need to indicate the scope of security-based swap business (e.g., security-based swap business carried on from an establishment in the UK) for which the Covered Entity is applying substituted compliance with respect to the relevant Exchange Act entity-level requirements. A Covered Entity would modify its

⁷ Letter from Thorsten Pötzsch, Chief Executive Director of BaFin's Resolution Sector, BaFin, to Vanessa Countryman, Secretary, Commission, dated August 12, 2021. The Amended Application is available on the Commission's website at: <https://www.sec.gov/page/exchange-act-substituted-compliance-and-listed-jurisdiction-applications-security-based-swap>.

⁸ The Amended Application requests substituted compliance with respect to investment firms and credit institutions that are authorized by BaFin to provide investment services or perform investment activities in Germany and are supervised by the ECB (or have a licensing application pending with the ECB as of the date of this application letter) as a significant institution. See Amended Application at 1. As such, the Commission is proposing to amend the definition of Covered Entity to conform to the request and the information provided. See para. (g)(1)(iii).

⁹ The entity-level requirements relate to non-bank capital and margin, books and records (other than those linked to the counterparty protection rules), internal risk management systems, trade acknowledgement and verification, portfolio reconciliation, compression, trading relationship documentation, and internal supervision and chief compliance officer requirements. See Capital and Margin Adopting Release, 84 FR 43879; Exchange Act Release No. 87005 (June 19, 2019) 84 FR 68550, 68596 (Dec. 16, 2019) ("Books and Records Adopting Release"); Exchange Act Release No. 78011 (June 8, 2016) 81 FR 39808, 39827 (June 17, 2016) ("TAV Adopting Release"); Exchange Act Release No. 87782 (Dec. 18, 2019) 85 FR 6359, 6378 (Feb. 4, 2020) ("Risk Mitigation Adopting Release"); Exchange Act Release No. 77617 (Apr. 14, 2016), 81 FR 29960, 30064 (May 13, 2016) ("Business Conduct Adopting Release"). Transaction-level requirements encompass business conduct requirements for the protection of counterparties, and additional provisions for the protection of

special entities. See also Business Conduct Adopting Release, 81 FR 30065.

¹⁰ In the context of the EMIR counterparties condition in para. (a)(5) of the proposed Amended Order, a Covered Entity must choose (1) to apply substituted compliance pursuant to the Order—including compliance with para. (a)(5) as applicable—for a particular set of entity-level requirements with respect to all of its business that would be subject to the relevant EMIR-based requirement if the counterparty were the relevant type of counterparty, or (2) to comply directly with the Exchange Act with respect to such business.

¹¹ Transaction-level requirements are the counterparty protection requirements and the books and records requirements related to those counterparty protection requirements.

¹² See para. (a)(9) of the proposed Amended Order. To promote up-to-date notice, the proposal further would require the Covered Entity to amend the notice if it modifies the scope of its reliance on substituted compliance. In addition, the proposal

C. Additional Condition Regarding Notification Requirements Related to Changes in Capital

Consistent with the UK and French Orders, the Commission is proposing to add a general condition that Covered Entities with a prudential regulator relying on substituted compliance pursuant to the proposed Amended Order must apply substituted compliance with respect to the requirements of Exchange Act rule 18a–8(c) and the requirements of Exchange Act rule 18a–8(h) as applied to Exchange Act rule 18a–8(c).¹⁴ In the UK and French Orders, the Commission took a granular approach with respect to substituted compliance determinations regarding the Exchange Act recordkeeping, reporting, and notification requirements. Consequently, a Covered Entity may comply directly with certain of the Exchange Act's recordkeeping, reporting, and notification provisions while applying substituted compliance to others. In taking this granular approach, the Commission conditioned substituted compliance with certain of the discrete recordkeeping, reporting, and notification requirements on the Covered Entity applying substituted compliance for the substantive Exchange Act requirement to which they are linked.¹⁵ Further, the Commission conditioned substituted compliance with respect to the substantive requirement on the Covered Entity applying substituted compliance for the linked recordkeeping, reporting, or notification requirement. These linked conditions are designed to ensure that a Covered Entity consistently applies substituted compliance with respect to the substantive Exchange Act requirement and the Exchange Act recordkeeping, reporting, or notification requirement that complements the substantive requirement.

Exchange Act rule 18a–8(c) generally requires every prudentially regulated security-based swap dealer that files a notice of adjustment of its reported capital category with the Federal Reserve, the OCC, or the FDIC to give notice of this fact that same day by transmitting a copy of the notice of adjustment of reported capital category

reliance on the positive substituted compliance determinations in the Order, and thereby trigger the requirement to update its notice, if it adds or subtracts determinations for which it is applying substituted compliance or completely discontinues its reliance on the proposed Amended Order.

¹⁴ See para. (a)(11) of the proposed Amended Order. See also French Order, 86 FR 41620–22; UK Order, 86 FR 43330–31.

¹⁵ See French Order, 86 FR 41621; UK Order, 86 FR 43330.

in accordance with Exchange Act rule 18a–8(h).¹⁶ Exchange Act rule 18a–8(h) sets forth the manner in which every notice or report required to be given or transmitted pursuant to Exchange Act rule 18a–8 must be made.¹⁷ While Exchange Act rule 18a–8(c) is not linked to a substantive Exchange Act requirement, it is linked to substantive capital requirements applicable to prudentially regulated SBS Entities in the U.S. (*i.e.*, capital requirements of the Federal Reserve, the OCC, or the FDIC). Therefore, to implement the granular approach adopted in the U.K. and French Orders, the Commission is proposing to add a general condition that Covered Entities with a prudential regulator relying on substituted compliance must apply substituted compliance with respect to the requirements of Exchange Act rule 18a–8(c) and the requirements of Exchange Act rule 18a–8(h) as applied to Exchange Act rule (c).

In its application, BaFin cited several German and EU provisions as providing similar outcomes to the notification requirements of Exchange Act rule 18a–8.¹⁸ This general condition is necessary in order to clarify that a prudentially regulated Covered Entity must provide the Commission with copies of any notifications regarding changes in the Covered Entity's capital situation required by German or EU law. In particular, absent this condition, a prudentially regulated Covered Entity could elect not to apply substituted compliance with respect to Exchange Act rule 18a–8(c). However, because the Covered Entity is not required to provide any notifications to the Federal Reserve, the OCC, or the FDIC, “compliance” with the provisions of Exchange Act rule 18a–8(c) raises a question as to the Covered Entity's obligations under this proposed Amended Order to provide the Commission with notification of changes in capital.

The Commission adopted Exchange Act Rule 18a–8(c) to require SBS Entities with a prudential regulator to give notice to the Commission when filing an adjustment of reported capital category because such notices may indicate that the entity is in or is

¹⁶ See 17 CFR 240.18a–8(c).

¹⁷ See 17 CFR 240.18a–8(h).

¹⁸ These German provisions include KWG section 25a(1) sentence 6 no. 3, and FinDAG section 4d, which provide, among other things, processes for employees to report breaches of certain EU regulations, and the establishment of systems by BaFin to accept reports of potential or actual violations of laws, ordinances, general rulings, and regulations and directives of the EU.

approaching financial difficulty.¹⁹ The Commission has a regulatory interest in being notified of changes in the capital of a prudentially regulated Covered Entity, as it could signal the firm is in or approaching financial difficulty and presents a risk to U.S. security-based swap markets and participants. For the foregoing reasons, the Commission is conditioning applying substituted compliance pursuant to the proposed Amended Order on the general condition that a prudentially regulated Covered Entity apply substituted compliance with respect to Exchange Act rule 18a–8(c) and the requirements of Exchange Act rule 18a–8(h) as applied to Exchange Act rule 18a–8(c).

D. Proposed Amendment to General Condition Regarding EU Cross-Border Matters

The Commission also is proposing to modify the Order's general condition related to EU cross-border matters. Substituted compliance under the Order in part is predicated on BaFin being responsible for the supervision and enforcement of Covered Entities in connection with certain MiFID provisions that constitute conditions to individual substituted compliance provisions.²⁰ That general condition is intended to help ensure that the prerequisites to substituted compliance with respect to supervision and enforcement are satisfied in practice when MiFID allocates responsibility for ensuring compliance to another EU Member State. Because MiFIR is subject to similar allocation provisions,²¹ the Commission is proposing to incorporate references to MiFIR requirements into the general condition.²² This change would be consistent with the French Order.²³

E. Additional MOU-Related General Condition

In light of the Amended Application, the Commission also is proposing to add a new general condition that would predicate substituted compliance on the presence of a supervisory and enforcement memorandum of understanding between the Commission and the European Central Bank (“ECB”)

¹⁹ See Exchange Act Release No. 71958 (Sept. 19, 2019), 84 FR 68550, 68589–90 (Dec. 16, 2019) (“Recordkeeping and Reporting Adopting Release”) (citing Exchange Act Release No. 71958 (Aug. 17, 2014) 79 FR 25193 (May 2, 2014) at 25249).

²⁰ See part III.A, *infra*.

²¹ See MiFID art. 35(8) (in part allocating responsibility over MiFIR articles 14 to 26 to competent authorities in member states in which branches are located).

²² See article (a)(10) of the proposed Amended Order.

²³ See para. (a)(10) of the French Order.

and/or BaFin, pertaining to information owned by the ECB.²⁴ The Commission's access to this ECB information will assist the Commission's effective oversight of Covered Entities that use substituted compliance in connection with capital and margin requirements.

III. Proposed Changes to Risk Control and Internal Supervision

A. Background—Order's MiFID Prerequisites Related to Trade Acknowledgment and Verification and Trading Relationship Documentation

Under the Order, substituted compliance for trade acknowledgment and verification and for trading relationship documentation in part requires that relevant SBS Entities ("Covered Entities" as defined in the Order) comply with certain requirements under MiFID (plus the German implementation of MiFID) and with certain requirements under EMIR.²⁵ Commenters expressed concern that the interplay between those particular MiFID conditions and a separate EU cross-border condition to the Order in practice would preclude the availability of substituted compliance for entities that have branches in other EU Member States.²⁶

²⁴ See para. (a)(8) of the proposed Amended Order.

²⁵ See paras. (b)(2) and (b)(5) of the proposed Amended Order.

²⁶ See SIFMA Letter I at 3–6 (commenting on the French Substituted Compliance Notice and Proposed Order but stating that the concerns applied equally to the German Order). In relevant part, the cross-border condition of paragraph (a)(10) of the proposed Amended Order states that if responsibility for ensuring compliance with any provision of MiFID or MiFIR (or EU or German implementing requirement) that is a condition for substituted compliance is allocated to an authority in a Member State of the EU in whose territory a Covered Entity provides a service, BaFin must be the authority responsible for supervision and enforcement of that provision. In practice (pursuant to MiFID article 35), this allocation of oversight applies to requirements pursuant to MiFID article 25 ("assessment of suitability and appropriateness and reporting to clients") as well as certain other MiFID provisions not relevant here. In the commenter's view, application of those MiFID article 25 conditions in connection with trade acknowledgment and verification requirements and trading relationship documentation requirements would "in practice lead to an untenable patchwork of substituted compliance." See SIFMA Letter I at 3. The commenter further states that SBS Entities "operating branches throughout the EU" would not be able to avail themselves of substituted compliance in connection with these requirements "unless authorities or regulated SBS Entities in every or nearly every one of the 27 EU Member States submit their own substituted compliance applications covering local branches of SBS Entities, and the Commission reviews and responds to those applications and enters into memoranda of understanding . . . with authorities in each of these Member States." That problem does not arise in connection with requirements under EMIR, which does not allocate oversight of a German entity's compliance to authorities in other EU Member

The commenters requested that the Commission remove those particular MiFID conditions, arguing that compliance with EMIR conditions standing alone still would produce regulatory outcomes comparable to those of the trade acknowledgment and verification requirement and the trading relationship documentation requirement under the Exchange Act.²⁷

After careful consideration, the Commission is proposing to amend the Order to address those concerns and for consistency with the French Order. The Order's EU cross-border condition provides an important safeguard to help ensure that firms that avail themselves of substituted compliance are subject to appropriate regulatory supervision and enforcement. At the same time, the Commission recognizes the significance of commenter concerns that the interplay between the EU cross-border condition and the MiFID conditions associated with trade acknowledgment and verification and with trading relationship documentation could have the effect of unnecessarily interfering with the use of substituted compliance when other provisions standing alone are sufficient for the Commission to make a positive substituted compliance determination.²⁸ As discussed below, the Commission is proposing to revise the Order's conditions related to trade acknowledgment and verification and to trading relationship documentation, by removing MiFID-related conditions and instead relying solely on EMIR conditions to establish comparability for those requirements.

B. Proposed Addition of EMIR-Related General Conditions

The proposed amendments addressed below would remove MiFID conditions and rely solely on EMIR conditions to establish comparability in connection with trade acknowledgment and verification and trading relationship documentation. This heightened reliance on EMIR highlights the need for safeguards to help ensure that there will be no opportunity for gaps that may prevent the EMIR provisions in practice

States. That problem also does not arise in connection with other requirements under MiFID (e.g., MiFID art. 16 organizational provisions) that are not subject to the same allocation of oversight.

²⁷ See SIFMA letter I at 5–6.

²⁸ SBS Entities subject to regulation in France are subject to the condition, and the proposed change would be consistent with the French Order. See para. (a)(10) of the French Order. The Commission addressed certain of the other issues raised by commenters when extending the comment period for the French Substituted Compliance Notice and Proposed Order. See Reopening Release, 86 FR 18341 (discussing commenter concerns regarding the scope of reliance on substituted compliance and the EU cross-border condition).

from producing outcomes consistent with those of the Exchange Act rules. The Commission accordingly is proposing to add two EMIR-related general conditions to the Order to help preclude such gaps.²⁹

The first condition provides that the Covered Entity must comply with the applicable condition of the proposed Amended Order as if the counterparty were the type of counterparty that would trigger the application of the relevant EMIR-based requirements. If the Covered Entity reasonably determines that its counterparty would be a financial counterparty³⁰ if not for the counterparty's location and/or lack of regulatory authorization in the EU, the condition further requires the Covered Entity to treat the counterparty as if the counterparty were a financial counterparty, rather than as another type of counterparty to which the relevant EMIR-based requirements may apply.³¹ By requiring a Covered Entity to treat its counterparty as a type of counterparty that would trigger the application of the relevant EMIR-based requirements, the condition will require the Covered Entity to perform the relevant obligations pursuant to those EMIR-based requirements and thus to act in a way that is comparable to Exchange Act requirements.³²

²⁹ The proposed addition of two new EMIR-related general conditions as paragraphs (a)(5) and (a)(6) of the proposed Amended Order would necessitate renumbering of certain of the extant general conditions, and also suggests the need to clarify the captions for certain of the other proposed general conditions (e.g., recaptioning proposed general conditions (a)(1) through (a)(3) of the proposed Amended Order to specifically refer to MiFID, and recaptioning of proposed general condition (a)(4) to specifically refer to CRD/CRR).

³⁰ EMIR article 2(8) defines "financial counterparty" to encompass investment firms, credit institutions, insurers and certain other types of businesses that have been authorized in accordance with EU law. Under EMIR, the distinction between financial counterparties and other types of counterparties such as non-financial counterparties is manifested, *inter alia*, in connection with confirmation timing standards. See EMIR RTS article 12.

³¹ See para. (a)(5) of the proposed Amended Order.

³² In other words, the Covered Entity would be subject to the relevant requirements under EMIR even if the counterparty is not an "undertaking" (such as by virtue of being a natural person), or is not established in the EU (by virtue of being a U.S. person or otherwise being established in some non-EU jurisdiction). The issue of whether the Covered Entity must treat the counterparty as a "financial counterparty" or "non-financial counterparty" would turn on whether the counterparty's business would require that it be registered pursuant to the categories identified in the EMIR article 2(8) "financial counterparty" definition (e.g., an authorized investment firm, credit institution, insurance undertaking) were the counterparty subject to the applicable authorization requirements. This approach generally appears to

In addition, the Commission is proposing to revise the Order to account for the fact that the relevant trade acknowledgement and verification and trading relationship documentation rules under the Exchange Act do not apply to security-based swaps cleared by a clearing agency registered with the Commission (or exempt from registration), while the analogous EMIR provisions exclude instruments that are cleared by a central counterparty that has been authorized or recognized to clear derivatives contracts in the EU. In particular—to help ensure that substituted compliance is available in connection with an instrument that has been cleared at an EU-authorized or EU-recognized central counterparty (and hence is not within the Exchange Act rule’s exclusion but also is not subject to relevant EMIR requirements)—the Commission is proposing a new general condition that, for each part of the Order that requires compliance with EMIR-related requirements, either: (i) The relevant security-based swap is an “OTC derivative” or “OTC derivative contract,” as defined in EMIR article 2(7), that has not been cleared by a central counterparty and otherwise is subject to the provisions of EMIR article 11, EMIR RTS articles 11 through 15, and EMIR Margin RTS article 2; or (ii) the relevant security-based swap has been cleared by a central counterparty that has been authorized or recognized to clear derivatives contracts by a relevant authority in the EU.³³

be consistent with European guidance. See European Securities and Markets Authority, “Questions and Answers: Implementation of the Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR)” (https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-52_qa_on_emir_implementation.pdf) answer 5(a) (stating that compliance with the EMIR confirmation requirement necessitates that the counterparties must reach a legally binding agreement to all terms of the OTC derivative contract, and that the EMIR RTS “implies” that both parties must comply and agree in advance to a specific process to do so); answer 12(b) (stating that where an EU counterparty transacts with a third country entity, the EU counterparty generally must ensure that the EMIR requirements for portfolio reconciliation, dispute resolution, timely confirmation and portfolio compression are met for the relevant portfolio and/or transactions even though the third country entity would not itself be subject to EMIR; this is subject to special processes when the European Commission has declared the third country requirements to be comparable to EU requirements).

³³ See para. (a)(6) of the proposed Amended Order. Prong (i) to this proposed condition would be satisfied by uncleared instruments that fall within the ambit of the EMIR requirements at issue. The alternative prong (ii) would be satisfied when instruments fall outside the ambit of those EMIR requirements by virtue of being cleared in the EU, akin to the Exchange Act rules’ exclusion for security-based swaps cleared by clearing agencies registered with the Commission.

C. Proposed Revisions to Conditions Related to Trade Acknowledgment and Verification, and Trading Relationship Documentation

Consistent with the French Order³⁴ the Commission is proposing to modify the Order to remove the existing MiFID conditions to substituted compliance for trade acknowledgment and verification. Substituted compliance instead would be conditioned solely on compliance with the confirmation provisions of EMIR article 11(1)(a) and EMIR RTS article 12.³⁵ Those EMIR provisions promote comparable risk control goals as the Exchange Act rule by providing for definitive written records of transactions. While the Commission recognizes that MiFID confirmation requirements also help to promote that goal, the Commission preliminarily believes that the EMIR provisions alone are sufficient for regulatory comparability, and recognizes that in practice the interplay between the EU cross-border condition and MiFID confirmation requirements may unnecessarily limit the use of substituted compliance and its associated efficiency benefits.

The Commission similarly is proposing to modify the Order to remove the existing MiFID conditions to substituted compliance for trading relationship documentation, and also to add the above EMIR confirmation provisions (reflecting that the Exchange Act trading relationship documentation rule requires that the necessary documentation include trade acknowledgments and verifications³⁶). Together with EMIR Margin RTS article 2 provisions that address risk management procedures related to the exchange of collateral, including procedures related to the terms of all necessary agreements to be entered into by counterparties (*e.g.*, payment obligations, netting conditions, events of default, calculation methods, transfers of rights and obligations upon termination, and governing law), the EMIR conditions promote comparable risk mitigation purposes as the trading relationship documentation rule under the Exchange Act by promoting certainty regarding the relevant framework governing the counterparties. Here too, while the Commission recognizes that MiFID documentation requirements also promote that goal, the Commission preliminarily believes the EMIR provisions alone are sufficient for regulatory comparability, and

³⁴ See para. (b)(2) of the French Order.

³⁵ See para. (b)(2) of the proposed Amended Order.

³⁶ See Exchange Act rule 15Fi-5(b)(2).

recognizes that in practice the interplay between the EU cross-border condition and MiFID documentation provisions may limit the use of substituted compliance and its associated regulatory benefits.³⁷

D. Proposed Revisions to Internal Risk Management and Internal Supervision

The Commission is also proposing to incorporate—as part of the relevant conditions in paragraph (b)(1) of the proposed Amended Order relating to internal risk management—MiFID articles 16 and 23 and the related implementing provisions, MiFID Org Reg articles 25 through 37, 72 through 76 and Annex IV, as well as CRD articles 88(1), 91(1)–(2) and (7)–(9) and the related implementing provisions.³⁸ These provisions address additional aspects of a Covered Entity’s management of the risks posed by internal governance and organization, business operations, conflicts of interest with and between clients, and senior staff remuneration policies and were part of the Commission’s comparability determination for entities subject to regulation in France. The Commission is also incorporating CRR articles 286–88 and 293 and EMIR Margin RTS article 2 to the conditions of paragraph (d)(3) of the proposed Amended Order relating to internal supervision.³⁹ These provisions relate to counterparty credit risk and risk management generally and collateral-related risk management procedures and were also part of the Commission’s comparability analysis in the French Order.⁴⁰ Also consistent with the French Order, the Commission is proposing to delete CRD article 93 and the related implementing provisions from both paragraph (d)(1) and (d)(3), as those provisions relate to remuneration policies for institutions that benefit from exceptional (German and EU) government intervention.⁴¹

IV. Proposed Substituted Compliance in Connection With Capital and Margin

A. BaFin’s Request and Associated Analytic Considerations

The Amended Application in part requests substituted compliance in connection with requirements under the Exchange Act relating to:

³⁷ These proposed changes are consistent with the French Order. See paras. (a)(5) and (a)(6) of the French Order.

³⁸ See para. (b)(1) of the proposed Amended Order.

³⁹ See para. (d)(3) of the proposed Amended Order.

⁴⁰ See paras. (b)(1) and (d)(3) of the French Order.

⁴¹ See paras. (b)(1) and (d)(3) of the proposed Amended Order.

• *Capital*—Capital requirements pursuant to Exchange Act section 15F(e) and Exchange Act rule 18a–1 and 18a–1a through 18a–1d applicable to certain SBS Entities.⁴² Exchange Act rule 18a–1 helps to ensure the SBS Entity maintains at all times sufficient liquid assets to promptly satisfy its liabilities, and to provide a cushion of liquid assets in excess of liabilities to cover potential market, credit, and other risks.⁴³ The rule’s net liquid assets test standard protects customers and counterparties and mitigates the consequences of an SBS Entity’s failure by promoting the ability of the firm to absorb financial shocks and, if necessary, to self-liquidate in an orderly manner.⁴⁴ As part of the capital requirements, security-based swap dealers without a prudential regulator also must comply with the internal risk management control requirements of Exchange Act Rule 15c3–4 with respect to certain activities.⁴⁵

• *Margin*—Margin requirements pursuant to Exchange Act section 15F(e) and Exchange Act rule 18a–3 for non-prudentially regulated SBS Entities.⁴⁶ The margin requirements are designed to protect SBS Entities from the

consequences of a counterparty’s default.⁴⁷

Taken as a whole, these capital and margin requirements help to promote market stability by mandating that SBS Entities follow practices to manage the market, credit, liquidity, solvency, counterparty, and operational risks associated with their security-based swap businesses. The Commission’s comparability assessment accordingly focuses on whether the analogous foreign requirements—taken as a whole—produce comparable outcomes with regard to providing that Covered Entities follow capital and margin requirements that address the risks associated with their security-based swap businesses.

B. Capital—Preliminary Views and Proposed Amended Order

In the Commission’s preliminary view, based on the Amended Application and the Commission’s review of applicable provisions, additional conditions on applying substituted compliance with respect to the Exchange Act capital requirements are necessary in order to produce comparable regulatory outcomes. Consequently, substituted compliance with respect to the capital requirements of Exchange Act rule 18a–1 would be conditioned on Covered Entities being subject to and complying with relevant EU and German capital requirements.⁴⁸ However, the proposed Amended Order would include the additional conditions discussed below that, in the aggregate, would be designed to establish a framework that produces outcomes comparable to those associated with the

capital requirements of Exchange Act rule 18a–1.

The first additional capital condition would require that the Covered Entity apply substituted compliance with respect to Exchange Act rules 18a–5(a)(9) (a record making requirement), 18a–6(b)(1)(x) (a record preservation requirement), and 18a–8(a)(1)(i), (a)(1)(ii), (b)(1), (b)(2), and (b)(4) (notification requirements relating to capital).⁴⁹ These recordkeeping and notification requirements are directly linked to the capital requirements of Exchange Act rule 18a–1. As discussed below in part VII.B.1 of this release, the proposed Amended Order conditions substituted compliance with respect to these recordkeeping and notification requirements on the Covered Entity applying substituted compliance with respect to Exchange Act rule 18a–1.⁵⁰ This proposed capital condition would do the reverse: Condition substituted compliance with respect to Exchange Act rule 18a–1 on the Covered Entity applying substituted compliance for these linked recordkeeping and notification requirements. This additional capital condition is designed to provide clarity as to the Covered Entity’s obligations under these recordkeeping and notification requirements when applying substituted compliance with respect to Exchange Act rule 18a–1 pursuant to the proposed Amended Order.

The second additional capital condition would be designed to ensure comparable regulatory outcomes between the standard of Exchange Act rule 18a–1 and the capital standard of the relevant EU and German laws, which is based on the international capital standard for banks (the “Basel capital standard”).⁵¹ In particular, the capital standard of Exchange Act rule 18a–1 is the net liquid assets test. This is the same capital standard that applies to broker-dealers under Exchange Act rule 15c3–1.⁵² The net liquid assets test

⁴² Exchange Act rule 18a–1 applies to security-based swap dealers that: (1) Do not have a prudential regulator; and (2) are either (a) not dually registered with the Commission as a broker-dealer or (b) are dually registered with the Commission as a special purpose broker-dealer known as an OTC derivatives dealer. Security-based swap dealers that are dually registered with the Commission as a full-service broker-dealer are subject to the capital requirements of Exchange Act rule 15c3–1 (17 CFR 240.15c3–1) for which substituted compliance is not available. See 17 CFR 240.3a71–6(d)(4)(i) (making substituted compliance available only with respect to the capital requirements of Exchange Act section 15F(e) and Exchange Act rule 18a–1).

⁴³ See Capital and Margin Adopting Release, 84 FR 43947. The Amended Application discusses EU and German requirements that address firms’ capital requirements. See Amended Application Annex A category 3 (Side Letter Addressing Capital Requirements). See also Amended Application Annex A category 4 (Internal Risk Management Requirements) (generally discussing internal risk management requirements).

⁴⁴ See Capital and Margin Adopting Release, 84 FR 43879–83. The capital standard of Exchange Act rule 18a–1 is based on the net liquid assets test of Exchange Act rule 15c3–1 applicable to broker-dealers. *Id.* The net liquid assets test seeks to promote liquidity by requiring that a firm maintain sufficient liquid assets to meet all liabilities, including obligations to customers, counterparties, and other creditors, and, in the event a firm fails financially, to have adequate additional resources to wind-down its business in an orderly manner without the need for a formal proceeding. See *id.* at 43879. See Amended Application Annex A category 3 (Side Letter Addressing Capital Requirements).

⁴⁵ See 17 CFR 240.15c3–4 and 18a–1(f).

⁴⁶ 17 CFR 240.18a–3.

⁴⁷ See Capital and Margin Adopting Release, 84 FR 43947, 43949 (“Obtaining collateral is one of the ways OTC derivatives dealers manage their credit risk exposure to OTC derivatives counterparties. Prior to the financial crisis, in certain circumstances, counterparties were able to enter into OTC derivatives transactions without having to deliver collateral. When ‘trigger events’ occurred during the financial crisis, those counterparties faced significant liquidity strains when they were required to deliver collateral”). The Amended Application discusses EU and German requirements that address firms’ margin requirements. See Amended Application Annex A category 4 (Margin Requirements for Nonbank Firms).

⁴⁸ In connection with capital requirements, Covered Entities must comply with: CRR, Part One (General Provisions) Article 6(1), Part Two (Own Funds), Part Three (Capital Requirements), Part Four (Large Exposures), Part Five (Exposures to Transferred Credit Risk), Part Six (Liquidity), and Part Seven (Leverage); MiFID Org Reg article 23; BRRD articles 45(6) and 81(1); CRD articles 73, 79, 86, 129, 129(1), 130, 130(1), 130(5), 131, 133, 133(1), 133(4), 141, and 142(1) and (2); EMIR Margin RTS articles 2, 3(b), 7, and 19(1)(d) and (e), (3) and (8); KWG sections 10b–10h, 10i(2)–(9), 25a(1) sentence 3 no. 2 and no. 3b), 33(1) sentence 1c); SAG section 49(2), 49d, 62(1), 138(1); and SolvV section 37. See para. (c)(1)(i) of the proposed Amended Order.

⁴⁹ See para. (c)(1)(ii) of the proposed Amended Order. This additional condition is included in the French and UK Orders. See French Order, 86 FR 41659; UK Order, 86 FR 43372.

⁵⁰ See paras. (f)(1)(i)(j), (f)(2)(i)(j), and (f)(4)(i)(A) of the proposed Amended Order.

⁵¹ See note 48, *supra* (citing EU and German capital requirements under the CRR). See also Basel Committee on Banking Supervision (“BCBS”), *The Basel Framework*, available at: https://www.bis.org/basel_framework/.

⁵² See, e.g., Capital and Margin Adopting Release, 84 FR 43881 (“The Commission believes that the broker-dealer capital standard is the most appropriate alternative for nonbank SBSs, given the nature of their business activities and the Commission’s experience administering the standard with respect to broker-dealers. The objective of the broker-dealer capital standard is to

is designed to promote liquidity.⁵³ In particular, Exchange Act rule 18a–1 allows an SBS Entity to engage in activities that are part of conducting a securities business (e.g., taking securities into inventory) but in a manner that places the firm in the position of holding at all times more than one dollar of highly liquid assets for each dollar of unsubordinated liabilities (e.g., money owed to customers, counterparties, and creditors).⁵⁴ For example, Exchange Act rule 18a–1 allows securities positions to count as allowable net capital, subject to standardized or internal model-based haircuts. The rule, however, does not permit most unsecured receivables to count as allowable net capital. This aspect of the rule severely limits the ability of SBS Entities to engage in activities, such as uncollateralized lending, that generate unsecured receivables. The rule also does not permit fixed assets or other illiquid assets to count as allowable net capital, which creates disincentives for SBS

protect customers and counterparties and to mitigate the consequences of a firm's failure by promoting the ability of these entities to absorb financial shocks and, if necessary, to self-liquidate in an orderly manner.”)

⁵³ See *id.* (“Consequently, in the Commission’s judgment, the broker-dealer capital standard is the appropriate standard for nonbank SBSs because it is designed to promote a firm’s liquidity and self-sufficiency (in other words, to account for the lack of inexpensive funding sources that are available to banks, such as deposits and central bank support).”).

⁵⁴ See, e.g., Exchange Act Release No. 8024 (Jan. 18, 1967), 32 FR 856 (Jan. 25, 1967) (“Rule 15c3–1 (17 CFR 240.15c3–1) was adopted to provide safeguards for public investors by setting standards of financial responsibility to be met by brokers and dealers. The basic concept of the rule is liquidity; its object being to require a broker-dealer to have at all times sufficient liquid assets to cover his current indebtedness.”) (footnotes omitted); Exchange Act Release No. 10209 (June 8, 1973), 38 FR 16774 (June 26, 1973) (Commission release of a letter from the Division of Market Regulation) (“The purpose of the net capital rule is to require a broker or dealer to have at all times sufficient liquid assets to cover its current indebtedness. The need for liquidity has long been recognized as vital to the public interest and for the protection of investors and is predicated on the belief that accounts are not opened and maintained with broker-dealers in anticipation of relying upon suit, judgment and execution to collect claims but rather on a reasonable demand one can liquidate his cash or securities positions.”); Exchange Act Release No. 15426 (Dec. 21, 1978), 44 FR 1754 (Jan. 8, 1979) (“The rule requires brokers or dealers to have sufficient cash or liquid assets to protect the cash or securities positions carried in their customers’ accounts. The thrust of the rule is to insure that a broker or dealer has sufficient liquid assets to cover current indebtedness.”); Exchange Act Release No. 26402 (Dec. 28, 1988), 54 FR 315 (Jan. 5, 1989) (“The rule’s design is that broker-dealers maintain liquid assets in sufficient amounts to enable them to satisfy promptly their liabilities. The rule accomplishes this by requiring broker-dealers to maintain liquid assets in excess of their liabilities to protect against potential market and credit risks.”) (footnote omitted).

Entities to own real estate and other fixed assets that cannot be readily converted into cash. For these reasons, Exchange Act rule 18a–1 incentivizes SBS Entities to confine their business activities and devote capital to security-based swap activities.

The net liquid assets test is imposed through how an SBS Entity is required to compute net capital pursuant to Exchange Act rule 18a–1. The first step is to compute the SBS Entity’s net worth under generally accepted accounting principles (“GAAP”). Next, the SBS Entity must make certain adjustments to its net worth to calculate net capital, such as deducting illiquid assets and taking other capital charges and adding qualifying subordinated loans.⁵⁵ The amount remaining after these deductions is defined as “tentative net capital.” Exchange Act rule 18a–1 prescribes a minimum tentative net capital requirement of \$100 million for SBS Entities approved to use models to calculate net capital. An SBS Entity that is meeting its minimum tentative net capital requirement will be in the position where each dollar of unsubordinated liabilities is matched by more than a dollar of highly liquid assets.⁵⁶ The final step in computing net capital is to take prescribed percentage deductions (standardized haircuts) or model-based deductions from the market-to-market value of the SBS Entity’s proprietary positions (e.g., securities, money market instruments, and commodities) that are included in its tentative net capital. The amount remaining is the firm’s net capital, which must exceed the greater of \$20 million or a ratio amount.

In comparison, the Basel capital standard counts as capital assets that Exchange Act rule 18a–1 would exclude

⁵⁵ See 17 CFR 240.15c3–1(c)(2).

⁵⁶ The highly liquid assets under Exchange Act Rule 18a–1 are otherwise known as “allowable assets” because they are not deducted when computing net capital. See Books and Records Adopting Release, 84 FR 68673–74, 68677–80 (the sections of the amended Part II of the FOCUS Report setting forth the assets side of the balance sheet and the net capital computation). Illiquid assets otherwise known as “non-allowable assets” are deducted when computing net capital. *Id.* Allowable assets include cash, certain unsecured receivables from broker-dealers and clearing organizations, reverse repurchase agreements, securities borrowed, fully secured customer margin loans, and proprietary securities, commodities, and swaps positions. *Id.* The term “high quality liquid assets” or “HQLA” are defined under the Basel capital standard’s liquidity coverage ratio (“LCR”) and generally consist of cash and specific classes of liquid securities. See BCBS, *LCR30—High-quality liquid assets* (under the Basel capital standards), available at: https://www.bis.org/basel_framework/chapter/LCR/30.htm. Generally, cash and securities that qualify as HQLA under the LCR would be allowable assets under Exchange Act rule 18a–1.

(e.g., loans and most other types of uncollateralized receivables, furniture and fixtures, real estate). The Basel capital standard accommodates the business of banking: Making loans (including extending unsecured credit) and taking deposits. While the Covered Entities that would apply substituted compliance with respect to Exchange Act rule 18a–1 will not be banks, the Basel capital standard allows them to count illiquid assets such as real estate and fixtures as capital. It also allows them to treat unsecured receivables related to activities beyond dealing in security-based swaps as capital notwithstanding the illiquidity of these assets.

Further, one critical example of the difference between the requirements of Exchange Act rule 18a–1 and the Basel capital standard relates to the treatment of initial margin with respect to security-based swaps and swaps. Under the EU margin requirements, Covered Entities will be required to post initial margin to counterparties unless an exception applies.⁵⁷ Under Exchange Act rule 18a–1, an SBS Entity cannot count as capital the amount of initial margin posted to a counterparty unless it enters into a special loan agreement with an affiliate.⁵⁸ The special loan agreement requires the affiliate to fund the initial margin amount and the agreement must be structured so that the affiliate—rather than the SBS Entity—bears the risk that the counterparty may default on the obligation to return the initial margin. The reason for this restrictive approach to initial margin posted away is that it “would not be available [to the SBS Entity] for other purposes, and, therefore, the firm’s liquidity would be reduced.”⁵⁹ Under the Basel capital standard, a Covered Entity can count initial margin posted away as capital without the need to enter into a special loan arrangement with an affiliate. Consequently, because of the ability to include illiquid assets and margin posted away as capital, Covered Entities subject to the Basel capital standard may have less balance sheet liquidity than SBS Entities subject to Exchange Act rule 18a–1.

In summary, there are key differences between the net liquid assets test of Exchange Act rule 18a–1 and the Basel capital standard applicable to Covered Entities. Those differences in terms of the types of assets that count as regulatory capital and how regulatory

⁵⁷ Exchange Act rule 18a–3 does not require SBS Entities to post initial margin (though it does not prohibit the practice).

⁵⁸ See Capital and Margin Adopting Release, 84 FR 43887–88.

⁵⁹ See *id.* at 43887.

capital is calculated lead to different regulatory outcomes. In particular, the net liquid assets test produces a regulatory outcome in which the SBS Entity has more than one dollar of highly liquid assets for each dollar of unsubordinated liabilities.⁶⁰ The Basel capital standard—while having measures designed to promote liquidity—does not produce this regulatory outcome.⁶¹ Therefore, the Commission preliminarily believes that an additional capital condition is needed to bridge the gap between these two capital standards and thereby achieve more comparable regulatory outcomes in terms of promoting liquid balance sheets for SBS Entities and Covered Entities.

However, in seeking to bridge this regulatory gap, the additional condition should take into account that Covered Entities are or will be subject to EU and German laws and measures designed to promote liquidity. In particular, Covered Entities are or will be subject to: (1) Requirements to hold an amount of HQLA to meet expected payment obligations under stressed conditions for thirty days (the “LCR requirement”);⁶² (2) requirements to hold a diversity of stable funding instruments sufficient to meet long-term obligations under both normal and stressed conditions (the “NSFR requirements”);⁶³ (3) requirements to perform liquidity stress tests and manage liquidity risk (the “internal liquidity assessment requirements”);⁶⁴ and (4) regular reviews of a Covered Entity’s liquidity risk management processes (the “liquidity review process”).⁶⁵ These EU and German laws and measures will require Covered Entities to hold significant levels of liquid assets. However, the laws and measures on their own, do not impose a net liquid assets test. Therefore, the Commission preliminarily believes that an additional condition is necessary to supplement these requirements.

The Commission has taken into account the EU and German liquidity

laws and measures discussed above in making a substituted compliance determination with respect to Exchange Act rule 18a–1, and in tailoring additional capital conditions designed to achieve comparable regulatory outcomes. The LCR, NSFR, and internal liquidity assessment requirements collectively will require Covered Entities to maintain pools of unencumbered HQLA to cover potential cash outflows during a 30-day stress period, to fund long-term obligations with stable funding instruments, and to manage liquidity risk. These requirements—coupled with supervisory reviews of the liquidity risk management practices of Covered Entities—will require Covered Entities to hold significant levels of liquid assets. These requirements and measures in combination with the other capital requirements applicable to Covered Entities provide a starting foundation for making a positive substituted compliance determination with respect to the capital requirements of Exchange Act section 15F(e) and Exchange Act rule 18a–1. However, the Commission preliminarily believes that more is needed to achieve a comparable regulatory outcome to the net liquid assets test of Exchange Act rule 18a–1.

For these reasons, the proposed Amended Order includes an additional capital condition that would impose a simplified net liquid assets test.⁶⁶ This simplified test would require the Covered Entity to hold more than one dollar of liquid assets for each dollar of liabilities. The simplified net liquid assets test—when coupled with the CRR capital requirements,⁶⁷ LCR requirements, NSFR requirements, internal liquidity assessment requirements, and liquidity review process—is designed to produce a regulatory outcome that is comparable to the net liquid assets test of Exchange Act rule 18a–1 (*i.e.*, sufficient liquidity to cover liabilities and to promote the maintenance of highly liquid balance sheets).

More specifically, substituted compliance with respect to Exchange Act rule 18a–1 would be subject to the condition that a Covered Entity: (1) Maintains liquid assets (as defined in the proposed condition) that have an aggregate market value that exceeds the amount of the Covered Entity’s total

liabilities by at least \$100 million before applying the deduction specified in the proposed condition, and by at least \$20 million after applying the deduction specified in the proposed condition; (2) makes and preserves for three years a quarterly record that: (a) Identifies and values the liquid assets maintained as defined in the proposed condition, (b) compares the amount of the aggregate value the liquid assets maintained pursuant to the proposed condition to the amount of the Covered Entity’s total liabilities and shows the amount of the difference between the two amounts (“the excess liquid assets amount”), and (c) shows the amount of the deduction specified in the proposed condition and the amount that deduction reduces the excess liquid assets amount; (3) notifies the Commission in writing within 24 hours in the manner specified on the Commission’s website if the Covered Entity fails to meet the requirements of the proposed condition and includes in the notice the contact information of an individual who can provide further information about the failure to meet the requirements; and (4) includes its most recent statement of financial condition filed with its local supervisor (whether audited or unaudited) with its initial written notice to the Commission of its intent to rely on substituted compliance.⁶⁸

Under the first prong of this additional capital condition, the Covered Entity would be required to maintain liquid assets (as defined in the proposed capital condition) that have an aggregate market value that exceeds the amount of the Covered Entity’s total liabilities by at least: (1) \$100 million before applying a deduction (as specified in the proposed capital condition); and (2) \$20 million after applying the deduction.⁶⁹ The first prong is designed to be consistent with the \$100 million tentative net capital requirement of Exchange Act rule 18a–1 applicable to SBS Entities approved to use models. As discussed above, Exchange Act rule 18a–1 requires SBS Entities that have been approved to use models to maintain at least *\$100 million* in tentative net capital. And, tentative net capital is the amount that an SBS Entity’s liquid assets exceed its total unsubordinated liabilities *before applying haircuts*. The first prong would require the Covered Entity to subtract

⁶⁰ As discussed above, highly liquid assets under Exchange Act rule 18a–1 are also known as “allowable assets” and generally are consistent with the LCR’s HQLA.

⁶¹ The Basel capital standard does not preclude a firm from having more than a dollar of highly liquid assets for each dollar of unsubordinated liabilities. Thus, a firm operating pursuant to the standard may structure its assets and liabilities in a manner that achieves this result. However, the standard does not mandate this result. Rather, it would accommodate a firm that seeks to maintain this level of liquidity on its own accord.

⁶² See CRR, Article 412(1).

⁶³ See CRR, Articles 413, 428a and 428az.

⁶⁴ See KWG, Article 25a(1), sentence 3 no. 3b).

⁶⁵ See KWG, Article 6b(2) no.7.

⁶⁶ See para. (c)(1)(iii) of the proposed Amended Order. This additional condition is included in the French and UK Orders. See French Order, 86 FR 41659; UK Order, 86 FR 43372.

See paras. (f)(1)(i)(j), (f)(2)(i)(j), and (f)(4)(i)(A) of the proposed Amended Order.

⁶⁷ See, e.g., CRR, Part 1 (Own Funds, including Tier 1 capital) and Part 2 (Capital Requirements).

⁶⁸ See para. (c)(1)(iii) of the proposed Amended Order. This proposed additional condition is included in the French and UK Orders. See French Order, 86 FR 41659; UK Order, 86 FR 43372.

⁶⁹ See para. (c)(1)(iii)(A)(1) of the proposed Amended Order. The definition of “liquid assets” and the method of calculating the deductions are discussed below.

total liabilities from total liquid assets. The amount remaining will need to equal or exceed \$100 million. The first prong also is designed to be consistent with the \$20 million fixed-dollar minimum net capital requirement of Exchange Act rule 18a-1. As discussed above, net capital is calculated by applying haircuts (deductions) to tentative net capital and the fixed-dollar minimum requires that net capital must equal or exceed \$20 million. The first prong would require the Covered Entity to subtract total liabilities from total liquid assets and then apply the deduction to the difference. The amount remaining after the deduction would need to equal or exceed \$20 million.

For the purposes of the first prong, "liquid assets" would be defined as: (1) Cash and cash equivalents; (2) collateralized agreements; (3) customer and other trading related receivables; (4) trading and financial assets; and (5) initial margin posted by the Covered Entity to a counterparty or third-party (subject to certain conditions discussed below).⁷⁰ These categories of liquid assets are designed to align with assets that are considered allowable assets for purposes of calculating net capital under Exchange Act rule 18a-1.⁷¹ Further, the first four categories of liquid assets also are designed to align with how Covered Entities categorize liquid assets on their financial statements.

The first category of liquid assets would be cash and cash equivalents.⁷² These assets would consist of cash and demand deposits at banks (net of overdrafts) and highly liquid investments with original maturities of three months or less that are readily convertible into known amounts of cash and subject to insignificant risk of change in value.⁷³ The second category of liquid assets would be collateralized agreements.⁷⁴ These assets would consist of secured financings where securities serve as collateral such as

repurchase agreements and securities loaned transactions.⁷⁵ The third category of liquid assets would be customer and other trading related receivables.⁷⁶ These assets would consist of customer margin loans, receivables from broker-dealers, receivables related to fails to deliver, and receivables from clearing organizations.⁷⁷ The fourth category of liquid assets would be trading and financial assets.⁷⁸ These assets would consist of cash market securities positions and listed and over-the-counter derivatives positions.⁷⁹

As discussed above, initial margin posted to a counterparty is treated differently under Exchange Act rule 18a-1 and the Basel capital standard. The fifth category of liquid assets would be initial margin posted by the Covered Entity to a counterparty or a third-party custodian, provided: (1) The initial margin requirement is funded by a fully executed written loan agreement with an affiliate of the Covered Entity; (2) the loan agreement provides that the lender waives re-payment of the loan until the initial margin is returned to the Covered Entity; and (3) the liability of the Covered Entity to the lender can be fully satisfied by delivering the collateral serving as initial margin to the lender.⁸⁰ As discussed above, one critical difference between Exchange Act rule 18a-1 and the Basel capital standard is that an SBS Entity cannot count as capital the amount of initial margin posted to a counterparty or third-party custodian unless it enters into a special loan agreement with an affiliate.⁸¹ Under the Basel capital standard, a Covered Entity can count initial margin posted away as capital without the need

to enter into a special loan arrangement with an affiliate. Consequently, to count initial margin posted away as a liquid asset for purposes of this capital condition, the Covered Entity would be required to enter into the same type of special agreement that an SBS Entity must execute to count initial margin as an allowable asset for purposes of Exchange Act rule 18a-1.⁸²

If an asset does not fall within one of the five categories of "liquid assets" as defined in the proposed Amended Order,⁸³ it would be considered non-liquid, and could not be treated as a liquid asset for purposes of this capital condition. For example, the following categories of assets generally could not be treated as liquid assets: (1) Investments; (2) loans; and (3) other assets. The non-liquid "investment" category would include the Covered Entity's ownership interests in subsidiaries or other affiliates. The non-liquid "loans" category would include unsecured loans and advances. The non-liquid "other" assets category would refer to assets that do not fall into any of the other categories of liquid or non-liquid assets. These non-liquid "other" assets would include furniture, fixtures, equipment, real estate, property, leasehold improvements, deferred tax assets, prepayments, and intangible assets.

As discussed above, the first prong of this capital condition would require the Covered Entity to subtract total liabilities from total liquid assets and then apply a deduction (haircut) to the difference.⁸⁴ The amount remaining after the deduction would need to equal or exceed \$20 million. The method of calculating the amount of the deduction would rely on the calculations Covered Entities must make under the Basel capital standard.⁸⁵ In particular, under the Basel standard, Covered Entities must risk-weight their assets. This involves adjusting the nominal value of each asset based on the inherent risk of the asset. Less risky assets are adjusted to lower values (*i.e.*, have less weight) than more risky assets. As a result, Covered Entities must hold lower levels of regulatory capital for less risky assets and higher levels of capital for riskier assets. Similarly, under Exchange Act rule 18a-1, less risky assets incur lower haircuts than riskier assets and,

⁷⁰ See para. (c)(1)(iii)(B) of the proposed Amended Order.

⁷¹ See *supra* notes 56 and 60 (describing allowable assets under Exchange Act rule 18a-1).

⁷² See para. (c)(1)(iii)(B)(1) of the proposed Amended Order.

⁷³ See, e.g., International Financial Reporting Standards Foundation ("IFRS"), *IAS 7 Statement of Cash Flows* (defining "cash" as comprising cash on hand and demand deposits and "cash equivalents" as short-term, highly liquid investments that are readily convertible to known amounts of cash and which are subject to an insignificant risk of changes in value). See also Books and Records Adopting Release, 84 FR 68673-74 (the section of the amended Part II of the FOCUS Report setting forth the assets side of the balance sheet and identifying cash as an allowable asset in Box 200).

⁷⁴ See para. (c)(1)(iii)(B)(2) of the proposed Amended Order.

⁷⁵ See Books and Records Adopting Release, 84 FR 68673-74 (the section of the amended Part II of the FOCUS Report setting forth the assets side of the balance sheet and identifying securities borrowed as an allowable asset in Boxes 240 and 250 and securities purchased under agreements to resell as an allowable asset in Box 360).

⁷⁶ See para. (c)(1)(iii)(B)(3) of the proposed Amended Order.

⁷⁷ See Books and Records Adopting Release, 84 FR 68673-74 (the section of the amended Part II of the FOCUS Report setting forth the assets side of the balance sheet and identifying fails to deliver as allowable assets in Boxes 220 and 230, receivables from clearing organizations as allowable assets in Boxes 280 and 290, and receivables from customers as allowable assets in Boxes 310, 320, and 330).

⁷⁸ See para. (c)(1)(iii)(B)(4) of the proposed Amended Order.

⁷⁹ See Books and Records Adopting Release, 84 FR 68673-74 (the section of the amended Part II of the FOCUS Report setting forth the assets side of the balance sheet and identifying securities, commodities, and swaps positions as allowable assets in Box 12019).

⁸⁰ See para. (c)(1)(iii)(B)(5) of the proposed Amended Order.

⁸¹ See Capital and Margin Adopting Release, 84 FR 43887-88.

⁸² *Id.*

⁸³ See para. (c)(1)(iii)(B) of the proposed Amended Order.

⁸⁴ See para. (c)(1)(iii)(A)(1) of the proposed Amended Order.

⁸⁵ See BCBS, *Risk-based capital requirements (RBC20)*, available at: https://www.bis.org/basel_framework/chapter/RBC/20.htm?inforce=20191215&published=20191215.

therefore, require less net capital to be held in relation to them. Consequently, the process of risk-weighting assets under the Basel capital standard provides a method to account for the inherent risk in an asset held by a Covered Entity similar to how the haircuts under the Exchange Act rule 18a-1 account for the risk of assets held by SBS Entities. For these reasons, the Commission preliminarily believes it would be appropriate to use the process of risk-weighting assets under the Basel capital standard to determine the amount of the deduction (haircuts) under the first prong of the third additional capital condition.

Under the Basel capital standard, Covered Entities must hold regulatory capital equal to at least 8% of the amount of their risk-weighted assets.⁸⁶ Therefore, the deduction (haircut) required for purposes of this capital condition would be determined by dividing the amount of the Covered Entity's risk-weighted assets by 12.5 (*i.e.*, the reciprocal of 8%).⁸⁷ In sum, the Covered Entity would be required to maintain an excess of liquid assets over total liabilities that equals or exceeds \$100 million before the deduction (derived from the firm's risk-weighted assets) and \$20 million after the deduction.⁸⁸

The second prong of this capital condition would require the Covered

Entity to make and preserve for three years a quarterly record that: (1) Identifies and values the liquid assets maintained pursuant to the first prong; (2) compares the amount of the aggregate value the liquid assets maintained pursuant to the first prong to the amount of the Covered Entity's total liabilities and shows the excess liquid assets amount; and (3) shows the amount of the deduction required under the first prong and the amount that deduction reduces the excess liquid assets amount.⁸⁹ Consequently, the quarterly record would include details showing whether the Covered Entity is meeting the \$100 million and \$20 million requirements of the first prong.

The third prong of this capital condition would require the Covered Entity to notify the Commission in writing within 24 hours in the manner specified on the Commission's website if the Covered Entity fails to meet the requirements of the first prong and include in the notice the contact information of an individual who can provide further information about the failure to meet the requirements.⁹⁰ As discussed above, the first additional capital condition would require the Covered Entity to apply substituted compliance with respect to notification requirements of Exchange Act rule 18a-8 relating to capital.⁹¹ A Covered Entity applying substituted compliance with respect to Exchange Act rule 18a-8 under the proposed Amended Order would need to simultaneously submit to the Commission any notifications relating to capital that it must submit to the EU and German authorities. However, EU and German notification requirements do not address a failure to adhere to the simplified net liquid assets test that would be required by the first prong of this capital condition. Moreover, due to the differences between Exchange Act rule 18a-1 and the Basel capital standard discussed above, a Covered Entity could fall out of compliance with the requirements of the first prong but still remain in compliance with the requirements of the Basel capital standard. Accordingly, the third prong would require the Covered Entity to notify the Commission if the firm fails to meet the requirements of the first prong. This would alert the Commission of potential issues with the Covered Entity's financial condition that

could pose risks to the firm's customers and counterparties.

The fourth prong of this condition would require the Covered Entity to include its most recently filed statement of financial condition (whether audited or unaudited) with its initial notice to the Commission of its intent to rely on substituted compliance.⁹² This one-time obligation would provide the Commission with information about the assets, liabilities, and capital of Covered Entities applying substituted compliance with respect to Exchange Act rule 18a-1. The Commission would use the statement of financial condition and the periodic audited and unaudited reports Covered Entities would file with the Commission to monitor the appropriateness of the capital condition if it is included in an amended order. The Commission expects that most Covered Entities will file their initial notice of intent to apply substituted compliance with respect to Exchange Act rule 18a-1 at or around the time they file their registration applications with the Commission. Therefore, receipt of the statement of financial condition at that time would allow the Commission to begin this monitoring process before Covered Entities begin filing audited and unaudited reports with the Commission pursuant to Exchange Act rule 18a-7 or an amended order providing substituted compliance for Exchange Act rule 18a-7.⁹³

C. Margin—Preliminary Views and Proposed Amended Order

In the Commission's preliminary view, based on the Amended Application and the Commission's review of applicable provisions, relevant EU and German margin requirements would produce regulatory outcomes that are comparable to those associated with Exchange Act rule 18a-3, provided Covered Entities are subject to additional conditions (discussed below) to address differences between the two margining regimes with respect to counterparty exceptions.

In terms of producing comparable outcomes, in adopting Exchange Act rule 18a-3, the Commission stated that it modified the proposal to more closely align the final rule with the margin rules of the Commodity Futures Trading Commission and the U.S. prudential regulators and, in doing so, with the recommendations made by the BCBS and the Board of the International

⁸⁶ *Id.*

⁸⁷ See para. (c)(1)(iii)(C) of the proposed Amended Order. The Commission acknowledges that a Covered Entity's risk-weighted assets will include components in addition to market and credit risk charges (*e.g.*, operational risk charges). However, the Commission expects the combined market and credit risk charges would make up the substantial majority of the risk-weighted assets. In addition, the Commission believes that this method of calculating the deduction in the first prong of the third additional capital condition is a reasonable approach in that it addresses market and credit risk similar to the process used by security-based swap dealers authorized to use internal models to compute market and credit risk deductions under Exchange Act rule 18a-1. See, *e.g.*, Exchange Act rule 18a-1(e) (prescribing requirements to calculate market and credit risk charges, including use of an 8% multiplication factor for calculating the credit risk charges).

⁸⁸ For example, assume a Covered Entity has total assets of \$600 million (of which \$595 million are liquid and \$5 million are illiquid) and total liabilities of \$450 million. In this case, the Covered Entity's liquid assets would exceed total liabilities by \$145 million (\$590 million minus \$450 million) and, therefore, the Covered Entity would have excess liquid assets greater than \$100 million as required by the first prong of this capital condition. Assume further that the Covered Entity's risk-weighted assets under the Basel capital standard equal \$400 million. In this case, the Covered Entity's deduction would equal \$32 million (\$400 million divided by 12.5). Subtracting \$32 million from \$145 million leaves \$113 million, which exceeds \$20 million. Therefore, the Covered Entity would meet the second requirement of the first prong of this capital condition.

⁸⁹ See para. (c)(1)(iii)(A)(2) of the proposed Amended Order.

⁹⁰ See para. (c)(1)(iii)(A)(3) of the proposed Amended Order.

⁹¹ See para. (c)(1)(ii) of the proposed Amended Order.

⁹² See para. (c)(1)(iii)(A)(4) of the proposed Amended Order.

⁹³ See part VII.B.4, *infra* (discussing proposed reporting conditions with respect to applying substituted compliance for Exchange Act rule 18a-7).

Organization of Securities Commissions (“IOSCO”) with respect to margin requirements for non-centrally cleared derivatives.⁹⁴ In this regard, Exchange Act rule 18a–3 and the EU and German margin rules require firms to collect liquid collateral from a counterparty to cover variation and/or initial margin requirements.⁹⁵ Both sets of rules also require firms to deliver liquid collateral to a counterparty to cover variation margin requirements. Under both sets of rules, the fair market value of collateral used to meet a margin requirement must be reduced by a haircut.⁹⁶ Further, both sets of rules permit the use of a model (including a third party model such as ISDA’s SIMM™ model) to calculate initial margin.⁹⁷ The initial margin model under both sets of rules must meet certain minimum qualitative and quantitative requirements, including that the model must use a 99 percent, one-tailed confidence level with price changes equivalent to a 10-day movement in rates and prices.⁹⁸ Both sets of rules have common exceptions to the requirements to collect and/or post initial or variation margin, including exceptions for certain commercial end users, the Bank for International Settlements, and certain multilateral development banks.⁹⁹ Both sets of rules also permit a threshold below which initial margin is not required to be collected and incorporate a minimum transfer amount.¹⁰⁰ For these reasons, substituted compliance with respect to

Exchange Act rule 18a–3 would be conditioned on Covered Entities being subject to and complying with these EU and German margin requirements.¹⁰¹

However, there would be additional conditions to address differences in the exceptions to collecting variation and/or initial margin between Exchange Act rule 18a–3 and the EU and German margin rules. In this regard, the Commission stated when proposing Exchange Act rule 18a–3 that the “Dodd-Frank Act seeks to address the risk of uncollateralized credit risk exposure arising from OTC derivatives by, among other things, mandating margin requirements for non-cleared security-based swaps and swaps.”¹⁰² Further, the comparability criteria for margin requirements under Exchange Act rule 3a71–6 provides that prior to making a substituted compliance determination, the Commission intends to consider (in addition to any conditions imposed) whether the foreign financial regulatory system requires registrants to adequately cover their current and future exposure to OTC derivatives counterparties, and ensures registrants’ safety and soundness, in a manner comparable to the applicable provisions arising under the Exchange Act and its rules and regulations.¹⁰³ In adopting this comparability criteria for margin requirements, the Commission stated that obtaining collateral is one of the ways OTC derivatives dealers manage their credit risk exposure to OTC derivatives counterparties.¹⁰⁴

To address the risk of uncollateralized exposures, Exchange Act rule 18a–3 requires SBS Entities without a prudential regulator to collect variation margin from all counterparties, including affiliates, unless an exception

applies.¹⁰⁵ Under the EU and German margin requirements, there are exceptions from the variation margin requirements for certain intragroup transactions (*i.e.*, transactions between affiliates).¹⁰⁶ In addition, Exchange Act rule 18a–3 requires firms to collect initial margin from all counterparties, unless an exception applies.¹⁰⁷ This initial margin requirement under Exchange Act rule 18a–3 requires the firm to collect initial margin from a financial counterparty such as a hedge fund without regard to whether the counterparty has material exposures to non-cleared security-based swaps and uncleared swaps. In contrast, EU and German margin requirements do not require Covered Entities to collect initial margin from financial counterparties, if their notional exposure to non-centrally cleared derivatives does not exceed a certain threshold on a group basis.¹⁰⁸

In some cases these differences may result in a Covered Entity not being adequately collateralized to cover its current or future exposure to these counterparties with respect to its OTC derivatives transactions. In addition, differences in the counterparty exceptions could potentially incentivize market participants to engage in non-cleared security-based swap transactions outside of the United States.¹⁰⁹ Consequently, the Commission preliminarily believes it would be appropriate to propose additional margin conditions to produce comparable regulatory outcomes in terms of counterparty exceptions between Exchange Act rule 18a–3 and the EU and German requirements.

The first additional condition is designed to address differences in the counterparty exceptions with respect to

⁹⁴ See Capital and Margin Adopting Release, 84 FR 43908–09; see also BCBS/IOSCO, Margin Requirements for Non-centrally Cleared Derivatives (April 2020), available at: <https://www.bis.org/bcbs/publ/d499.pdf> (“BCBS/IOSCO Paper”). The EU and German margin requirements also are based on the recommendation in the BCBS/IOSCO Paper.

⁹⁵ See 17 CFR 240.18a–3(c)(1)(ii) and the Amended Application Annex A category 4 at 28–31.

⁹⁶ See 17 CFR 240.18a–3(c)(1)(ii) and the Amended Application Annex A category 4 at 38–39.

⁹⁷ See 17 CFR 240.18a–3(d)(2)(i) and the Amended Application Annex A category 4 at 12–18.

⁹⁸ See 17 CFR 240.18a–3(d)(2)(i) and the Amended Application Annex A category 4 at 12. The Commission must approve the use of an initial margin model. 17 CFR 240.18a–3(d)(2)(i). EMIR article 11(15) directs European supervisory authorities to develop regulatory technical standards under which initial margin models have to be approved (initial and ongoing approval). EU and German requirements currently provide that, upon request, counterparties using an initial margin model shall provide the regulators with any documentation relating to the risk management procedures relating to such model at any time. EMIR Margin RTS article 2(6).

⁹⁹ See 17 CFR 240.18a–3(c)(1)(iii) and the Amended Application Annex A category 4 at 54–63.

¹⁰⁰ See 17 CFR 240.18a–3(c)(1)(iii) and the Amended Application Annex A category 4 at 64–66.

¹⁰¹ See para. (c)(2)(i) of the proposed Amended Order. In connection with margin requirements, Covered Entities would need to comply with: EMIR article 11; EMIR Margin RTS; CRR articles 103, 105(3); 105(10); 111(2), 224, 285, 286, 286(7), 290, 295, 296(2)(b), 297(1), 297(3), and 298(1); MiFID Org Reg article 23(1); CRD articles 74 and 79(b); and KWG section 25a(1). See para. (c)(2)(i) of the proposed Amended Order.

¹⁰² See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers; Proposed Rule, Exchange Act Release No. 68071 (Oct. 18, 2012), 77 FR 70214, 70258 (Nov. 23, 2012).

¹⁰³ See 17 CFR 240.3a71–6(d)(5)(i) and (ii).

¹⁰⁴ See Capital and Margin Adopting Release, 84 FR 43949 (“Obtaining collateral is one of the ways OTC derivatives dealers manage their credit risk exposure to OTC derivatives counterparties. Prior to the financial crisis, in certain circumstances, counterparties were able to enter into OTC derivatives transactions without having to deliver collateral. When “trigger events” occurred during the financial crisis, those counterparties faced significant liquidity strains when they were required to deliver collateral.”). *Id.*

¹⁰⁵ See 17 CFR 240.18a–3(c)(ii)(A)(1) and (2).

¹⁰⁶ See the Amended Application Annex A category 4 at 60–61.

¹⁰⁷ See 17 CFR 240.18a–3(c)(ii)(B).

¹⁰⁸ See the Amended Application Annex A category 4 at 7 and 63. These thresholds are being phased-in with the last initial margin threshold set at EUR 8 billion.

¹⁰⁹ The Commission recognizes there are also cases where the EU and German margin rules are more restrictive than Exchange Act rule 18a–3. EU margin rules require Covered Entities to post initial margin to covered counterparties, while the Exchange Act rule 18a–3 would permit posting but not require it. In addition, EU margin rules also require a Covered Entity to collect (and post) initial margin to financial and non-financial counterparties if their notional exposure to non-centrally cleared derivatives exceeds a certain threshold on a group basis. In contrast, Exchange Act rule 18a–3 does not require (but permits) a nonbank security-based swap dealer to collect initial margin from counterparties that are financial market intermediaries. 17 CFR 240.18a–3(c)(1)(iii)(B). The comparability analysis, however, focuses on determining whether the EU and German margin rules are comparable to Exchange Act rule 18a–3.

variation margin. It would require a Covered Entity to collect variation margin, as defined in the EMIR Margin RTS, from a counterparty with respect to a transaction in non-cleared security-based swaps, unless the counterparty would qualify for an exception under Exchange Act rule 18a-3 from the requirement to deliver variation margin to the Covered Entity.¹¹⁰ This condition would define variation margin by referencing EMIR Margin RTS to facilitate implementation of the condition by Covered Entities. Under this condition, for example, Covered Entities would be required to collect variation margin from their affiliates, but would be permitted to comply with all other EU and German margin requirements, including calculation, collateral, documentation, and timing of collection requirements. The first proposed additional condition would close the gap between the counterparty exceptions of Exchange Act rule 18a-3 and the EU and German margin rules with respect to variation margin.

The second proposed additional condition is designed to address the counterparty exceptions with respect to initial margin. It would require a Covered Entity to collect initial margin, as defined in the EMIR Margin RTS, from a counterparty with respect to transactions in non-cleared security-based swaps, unless the counterparty would qualify for an exception under Exchange Act rule 18a-3 from the requirement to deliver initial margin to a Covered Entity.¹¹¹ The condition would define initial margin by referencing EMIR Margin RTS to facilitate implementation of the condition by Covered Entities. Under this condition, for example, Covered Entities would be required to collect initial margin from their certain counterparties, but would be permitted to comply with all other EU and German margin requirements, including calculation, collateral, documentation, and timing of collection requirements. The second proposed additional condition would close the gap between the counterparty exceptions of Exchange Act rule 18a-3 and the EU and German margin rules with respect to initial margin.

Finally, the proposed Amended Order also includes as a proposed margin condition that the Covered Entity apply

¹¹⁰ See para. (c)(2)(ii) of the proposed Amended Order. This proposed additional condition is included in the French and UK Orders. See French Order, 86 FR 41659; UK Order, 86 FR 43372.

¹¹¹ See para. (c)(2)(iii) of the proposed Amended Order. This proposed additional condition is included in the French and UK Orders. See French Order, 86 FR 41659; UK Order, 86 FR 43372.

substituted compliance with respect to Exchange Act rule 18a-5(a)(12) (a record making requirement).¹¹² This record making requirement is directly linked to the margin requirements of Exchange Act rule 18a-3. The proposed Amended Order conditions substituted compliance with respect to this record making requirement on the Covered Entity applying substituted compliance with respect to Exchange Act rule 18a-3.¹¹³ This condition would do the reverse: Condition substituted compliance with respect to Exchange Act rule 18a-3 on the Covered Entity applying substituted compliance with respect to Exchange Act rule 18a-5(a)(12). This condition is designed to provide clarity as to the Covered Entity's obligations under this record making requirement when applying substituted compliance with respect to Exchange Act rule 18a-3 pursuant this proposed Amended Order.

V. Proposed Amendments Related to CCO Reports

A. Compliance Report Certifications

Rule 15Fk-1 states that the required reports must include "a certification by the chief compliance officer or senior officer that, to the best of his or her knowledge and reasonable belief and under penalty of law, the information contained in the compliance report is accurate and complete in all material respects."¹¹⁴ The standard applied in the Order required certification that "under penalty of law, the report is accurate and complete."¹¹⁵ The Commission preliminarily believes that, consistent with the French Order,¹¹⁶ further alignment of the proposed Amended Order's certification requirement with that of the applicable Exchange Act rule is appropriate. Therefore, the proposed Amended Order would clarify that the required reports should be certified by "the chief compliance officer or senior officer" of the Covered Entity and that the same certification standard contained in Exchange Act rule 15Fk-1 would apply.¹¹⁷

¹¹² See para. (c)(2)(iv) of the proposed Amended Order. This proposed additional condition is included in the French and UK Orders. See French Order, 86 FR 41659; UK Order, 86 FR 43372.

¹¹³ See para. (f)(1)(i)(L) of the proposed Amended Order.

¹¹⁴ Exchange Act rule 15Fk-1(c)(2)(ii)(D); see also Exchange Act rule 15Fk-1(e)(2) (defining "senior officer" as "the chief executive officer or other equivalent officer").

¹¹⁵ See para. (d)(2) of the Order.

¹¹⁶ See French Order, 86 FR 41659.

¹¹⁷ See para. (d)(2)(ii)(B) of the proposed Amended Order. In addition, for consistency with the French Order, the Commission is proposing to incorporate CRR articles 286-88 and 293 and EMIR

B. Timing of Compliance Report Submission

Also consistent with the French Order,¹¹⁸ the Commission is proposing to amend the Order to clarify the timing for Covered Entities to submit compliance reports to the Commission. To promote timely notice comparable to what the Exchange Act rule provides, the Commission is proposing to incorporate a timing standard that accounts for MiFID-required timing as well as the possibility that the relevant reports may be submitted to the management body early. Under the proposed Amended Order, the applicable compliance reports must be provided to the Commission no later than 15 days following the earlier of: (i) The submission of the report to the Covered Entity's management body; or (ii) the time the report is required to be submitted to the management body.¹¹⁹ The proposed Amended Order would also clarify that together the reports must cover the entire period that the Covered Entity's annual compliance report referenced in Exchange Act section 15F(k)(3) and Exchange Act rule 15Fk-1(c) would be required to cover.¹²⁰

VI. Proposed Amendments Counterparty Protection Requirements

A. Disclosure of Information Regarding Material Risks and Characteristics

The Commission is proposing to add two requirements to the list of German and EU disclosure of information regarding material incentives or conflicts of interest requirements that the Covered Entity must be subject to and comply with. The MAR Investment Recommendations Regulation articles 5 and 6 enumerate specific obligations in relation to disclosure of interests or of conflicts of interest. Article 5 requires that persons who produce recommendations disclose in their recommendations all relationships and circumstances that may reasonably be expected to impair the objectivity of the recommendation, including interests or conflicts of interest. Article 6 imposes additional obligations on certain entities, including the disclosure of information on their interests and conflicts of interest concerning the issuer to which a recommendation relates. The Commission preliminarily believes that requiring Covered Entities

Margin RTS article 2 as part of para. (d)(3) of the proposed Amended Order.

¹¹⁸ See French Order, 86 FR 41659.

¹¹⁹ See para. (d)(2)(D) of the proposed Amended Order.

¹²⁰ See para. (d)(2)(E) of the proposed Amended Order.

to be subject to and comply with MAR Investment Recommendations Regulation articles 5 and 6 contributes to a determination that relevant German and EU requirements produce regulatory outcomes that are comparable to relevant requirements of Exchange Act rule 15Fh-3(b).

B. Fair and Balanced Communications

The Commission is also proposing to modify the fair and balanced communications section of the proposed Amended Order.¹²¹ First, the Commission believes that German and EU fair and balanced communications requirements are more comparable to Exchange Act requirements when considering three additional EU requirements: MAR article 20(1) would require the Covered Entity to present recommendations in a manner that ensures the information is objectively presented and to disclose interests and conflicts of interest concerning the financial instruments to which the information relates. MAR Investment Recommendations Regulation article 3 would require a Covered Entity to communicate only recommendations that present facts in a way that they are clearly distinguished from interpretations, estimates, opinions and other types of non-factual information; label clearly and prominently projections, forecasts and price targets; indicate the relevant material assumptions and substantial material sources of information; and include only reliable information or a clear indication when there is doubt about reliability. MAR Investment Recommendations Regulation article 4 would require the Covered Entity to provide in its recommendation additional information about the factual basis of its recommendation. Accordingly, the Commission is adding these three requirements to the Order's list of German and EU fair and balanced communications requirements that the Covered Entity must be subject to and comply with.¹²² Second, the Order required the Covered Entity to be subject to and comply with MAR Investment Recommendations Regulation article 5,¹²³ which relates to obligations to disclose conflicts of interest. As discussed above, the Commission is requiring Covered Entities to comply with this requirement and with MAR Investment Recommendations Regulation article 6 when using substituted compliance for

disclosure of material incentives and conflicts of interest requirements. Accordingly, the Commission believes that MAR Investment Recommendations Regulation article 5 is less relevant to comparability of fair and balanced communications requirements and is proposing to delete the reference to it in relation to substituted compliance for fair and balanced communications.

VII. Proposed Amendments Related to Recordkeeping, Reporting, Notification, and Securities Count Requirements

A. BaFin Request and Associated Analytic Considerations

In its initial application (the "BaFin Application"), in part, requests substituted compliance for requirements applicable to SBS Entities with and without a prudential regulator under the Exchange Act relating to:

- *Recordmaking*—Exchange Act rule 18a-5 requires prescribed records to be made and kept current.¹²⁴
- *Record Preservation*—Exchange Act rule 18a-6 requires preservation of records.¹²⁵
- *Reporting*—Exchange Act rule 18a-7 requires certain reports.¹²⁶
- *Notification*—Exchange Act rule 18a-8 requires notification to the Commission when certain financial or operational problems occur.¹²⁷
- *Securities Count*—Exchange Act rule 18a-9 requires non-prudentially regulated security-based swap dealers to perform a quarterly securities count.¹²⁸
- *Daily Trading Records*—Exchange Act section 15F(g) requires SBS Entities to maintain daily trading records.¹²⁹

¹²⁴ See 17 CFR 240.18a-5. The BaFin Application discusses German requirements that address firms' record creation obligations related to matters such as financial condition, operations, transactions, counterparties and their property, personnel and business conduct. See BaFin Application Annex A category 2 at 4-34.

¹²⁵ See 17 CFR 240.18a-6. The BaFin Application discusses German requirements that address firms' record preservation obligations related to records that firms are required to create, as well as additional records such as records of communications. See BaFin Application Annex A category 2 at 35-79.

¹²⁶ See 17 CFR 240.18a-7. The BaFin Application discusses German requirements that address firms' obligations to make certain reports. See BaFin Application Annex A category 2 at 80-91, 96-102.

¹²⁷ See 17 CFR 240.18a-8. The BaFin Application discusses German requirements that address firms' obligations to make certain notifications. See BaFin Application Annex A category 2 at 92-96, 102.

¹²⁸ See 17 CFR 240.18a-9. The BaFin Application discusses German requirements that address firms' obligations to perform securities counts. See BaFin Application Annex A category 2 at 27-30.

¹²⁹ See 15 U.S.C. 78o-10(g). The BaFin Application discusses German requirements that address firms' record preservation obligations related to records that firms are required to create, as well as additional records such as records of communications. See BaFin Application Annex A category 2 at 35-79.

Taken as a whole, the recordkeeping, reporting, notification, and securities count requirements that apply to SBS Entities are designed to promote the prudent operation of the firm's security-based swap activities, assist the Commission in conducting compliance examinations of those activities, and alert the Commission to potential financial or operational problems that could impact the firm and its customers.

B. Preliminary Views and Proposed Amended Order

1. General Considerations

In issuing the Order, the Commission found that relevant EU and German requirements, subject to conditions and limitations, would produce regulatory outcomes that are comparable to the outcomes associated with the recordkeeping, reporting, and notification requirements of Exchange Act rules 18a-5, 18a-6, 18a-7, and 18a-8 applicable to SBS Entities with a prudential regulator. However, the BaFin Application did not seek substituted compliance for the Exchange Act capital and margin requirements applicable to SBS Entities without a prudential regulator. Because of the close relationship between many of the Exchange Act recordkeeping, reporting, and notification requirements and the administration and oversight of Exchange Act capital and margin requirements, the Order did not address substituted compliance for recordkeeping, reporting, notification, and securities count requirements applicable to SBS Entities without a prudential regulator. The Commission is now considering substituted compliance for these Exchange Act requirements because the Amended Application requests substituted compliance for the Exchange Act capital and margin requirements applicable to SBS Entities without a prudential regulator. The Commission also is considering substituted compliance with respect to the trading record preservation requirements of Exchange Act section 15F(g), which are applicable to SBS Entities with and without a prudential regulator.

The Commission preliminarily concludes that the relevant EU and German requirements, subject to conditions and limitations, would produce regulatory outcomes that are comparable to the outcomes associated with the requirements of Exchange Act rules 18a-5, 18a-6, 18a-7, 18a-8, and 18a-9 applicable to SBS Entities without a prudential regulator and to the outcomes associated with Exchange Act section 15F(g) applicable to all SBS

¹²¹ See para. (e)(2)(iii) of the proposed Amended Order.

¹²² See para. (e)(5) of the Order.

¹²³ See para. (d)(2) of the Order.

Entities. In reaching this preliminary conclusion, the Commission recognizes that there are certain differences between the EU and German requirements and the Exchange Act requirements. In the Commission's preliminary view, on balance, those differences generally would not be inconsistent with substituted compliance for these requirements. Requirement-by-requirement similarity is not needed for substituted compliance.

The Order makes substituted compliance available with respect to the entirety of Exchange Act rules 18a-5, 18a-6, 18a-7, and 18a-8 as applicable to Covered Entities with a prudential regulator. Consequently, under the Order, the Covered Entity can elect to apply substituted compliance with respect to the entire rule (subject to conditions and limitations) or, alternatively, comply with the Exchange Act rule. The proposed Amended Order would modify this approach to provide all Covered Entities with greater flexibility to select which distinct requirements within the broader rule for which they would apply substituted compliance. This would not preclude a Covered Entity from applying substituted compliance for the entire rule (subject to conditions and limitations). However, it would permit the Covered Entity to apply substituted compliance with respect to certain requirements of a given rule and to comply directly with the remaining requirements. This more granular approach to making substituted compliance determinations with respect to discrete requirements within Exchange Act rules 18a-5, 18a-6, 18a-7, and 18a-8 (collectively, the "recordkeeping, reporting, and notification rules") is intended to permit Covered Entities to leverage existing recordkeeping and reporting systems that are designed to comply with the broker-dealer recordkeeping and reporting requirements on which the recordkeeping, reporting, and notification requirements applicable to SBS Entities are based. For example, it may be more efficient for a Covered Entity to comply with certain Exchange Act requirements within a given recordkeeping, reporting, or notification rule (rather than apply substituted compliance) because it can utilize systems that its affiliated broker-dealer has implemented to comply with them. This proposed approach is consistent with the approach taken by the

Commission in the French and UK Orders.¹³⁰

As applied to Exchange Act rules 18a-5 and 18a-6, this approach of providing greater flexibility results in preliminary substituted compliance determinations with respect to the different categories of records these rules require SBS Entities to make, keep current, and/or preserve. The objective of these rules—taken as a whole—is to assist the Commission in monitoring and examining for compliance with substantive Exchange Act requirements applicable to SBS Entities (e.g., capital and margin requirements) as well as to promote the prudent operation of these firms.¹³¹ The Commission preliminarily believes the comparable EU and German recordkeeping rules achieve these outcomes with respect to compliance with substantive EU and German requirements for which preliminary positive substituted compliance determinations are being made in this proposed Amended Order (e.g., the preliminary positive substituted compliance determinations with respect to the Exchange Act capital and margin requirements). At the same time, the recordkeeping rules address different categories of records through distinct requirements within the rules. Each requirement with respect to a specific category of records (e.g., paragraph (a)(2) of Exchange Act rule 18a-5 addressing ledgers (or other records) reflecting all assets and liabilities, income and expense and capital accounts) can be viewed in isolation as a distinct recordkeeping rule. Therefore, it may be appropriate to make substituted compliance determinations at this level of Exchange Act rules 18a-5 and 18a-6.

As discussed in more detail below, the Commission's preliminary view is that substituted compliance is appropriate for most of the requirements within the recordkeeping, reporting, and notification rules. However, certain of the discrete requirements in these rules are fully or partially linked to substantive Exchange Act requirements for which substituted compliance is not available or for which a positive substituted compliance determination would not be made under the proposed Amended Order. In these cases, a preliminary positive substituted compliance determination would not be made for the requirement that is fully linked to the substantive requirement or

to the part of the requirement that is linked to the substantive requirement. In particular, a preliminary positive substituted compliance determination would not be made, in full or in part, for recordkeeping, reporting, or notification requirements linked to the following Exchange Act rules for which substituted compliance is not available or a positive substituted compliance determination would not be made: (1) Exchange Act rule 15Fh-4 ("Rule 15Fh-4 Exclusion"); (2) Exchange Act rule 15Fh-5 ("Rule 15Fh-5 Exclusion"); (3) Exchange Act rule 15Fh-6 ("Rule 15Fh-6 Exclusion"); (4) Exchange Act rule 18a-2 ("Rule 18a-2 Exclusion"); (5) Exchange Act rule 18a-4 ("Rule 18a-4 Exclusion"); (6) Regulation SBSR ("Regulation SBSR Exclusion"); and (7) Form SBSE and its variations ("Form SBSE Exclusion"). This proposed approach is consistent with the approach taken by the Commission in the French and UK Orders.¹³²

In addition, certain of the requirements in the recordkeeping, reporting, and notification rules are expressly linked to substantive Exchange Act requirements where a preliminary positive substituted compliance determination would be made under the proposed Amended Order. In these cases, substituted compliance with the linked requirement in the recordkeeping, reporting, or notification rule would be conditioned on the Covered Entity applying substituted compliance to the linked substantive Exchange Act requirement. This would be the case regardless of whether the requirement is fully or partially linked to the substantive Exchange Act requirement. The recordkeeping, reporting, and notification requirements that are linked to a substantive Exchange Act requirement are designed and tailored to assist the Commission in monitoring and examining an SBS Entity's compliance with the substantive Exchange Act requirement. EU and German recordkeeping, reporting, and notification requirements are designed to perform a similar role with respect to the substantive EU and German requirements to which they are linked. Consequently, this condition would be designed to ensure that the records, reports, and notifications of a Covered Entity align with the substantive Exchange Act or EU or German requirement to which they are linked. For these reasons, under the proposed Amended Order, substituted compliance for recordkeeping,

¹³⁰ See French Order, 86 FR 41649; UK Order, 86 FR 43360.

¹³¹ See, e.g., Exchange Act Release No. 71958 (Apr. 17, 2014), 79 FR 25194, 25199-200 (May 2, 2014).

¹³² See French Order, 86 FR 41650; UK Order, 86 FR 43361.

reporting, and notification requirements linked to the following Exchange Act rules would be conditioned on the Covered Entity applying substituted compliance to the linked substantive Exchange Act rule: (1) Exchange Act rule 15Fh-3 (“Rule 15Fh-3 Condition”); (2) Exchange Act rule 15Fi-2 (“Rule 15Fi-2 Condition”); (3) Exchange Act rule 15Fi-3 (“Rule 15Fi-3 Condition”); (4) Exchange Act rule 15Fi-4 (“Rule 15Fi-4 Condition”); (5) Exchange Act rule 15Fi-5 (“Rule 15Fi-5 Condition”); (6) Exchange Act rule 15Fk-1 (“Rule 15Fk-1 Condition”); (7) Exchange Act rule 18a-1 (“Rule 18a-1 Condition”); (8) Exchange Act rule 18a-3 (“Rule 18a-3 Condition”); (9) Exchange Act rule 18a-5 (“Rule 18a-5 Condition”) and (10) Exchange Act rule 18a-7 (“Rule 18a-7 Condition”). This proposed approach is consistent with the approach taken by the Commission in the French and UK Orders.¹³³

Moreover, while certain recordkeeping and reporting requirements are not expressly linked to Exchange Act rule 18a-1, they would be important to the Commission’s ability to monitor or examine for compliance with the capital requirements of this rule. The records also would assist the firm in monitoring its net capital position and, therefore, in complying with Exchange rule 18a-1. Therefore, substituted compliance with respect to these recordkeeping and reporting requirements would be subject to the condition that the Covered Entity applies substituted compliance with respect to Exchange Act rule 18a-1 (*i.e.*, the “Rule 18a-1 Condition”). This approach would be designed to ensure that, if the Covered Entity does not apply substituted compliance with respect to Exchange Act rule 18a-1, it makes and preserves records and files reports that the Commission uses to monitor and examine for compliance with the Exchange Act rule 18a-1, and that the firm makes and preserves records to assist it in complying with these rules.

Additionally, substituted compliance with respect to paragraphs (a)(1), (b), and (c) through (h) of Exchange Act rule 18a-7 would be subject to the additional condition that the Covered Entity applies substituted compliance with respect to Exchange Act rule 18a-6(b)(1)(viii) (the “Rule 18a-6(b)(1)(viii) Condition”). This record preservation requirement is directly linked to the financial and operational reporting requirements of paragraphs (a)(1), (b), and (c) through (h) of Exchange Act rule

18a-7 and this additional condition would be designed to provide clarity as to the Covered Entity’s obligations under this record preservation requirement when applying substituted compliance with respect to paragraphs (a)(1), (b), and (c) through (h) of Exchange Act rule 18a-7 pursuant to this proposed Amended Order. This proposed approach is consistent with the approach taken by the Commission in the French and UK Orders.¹³⁴

2. Exchange Act Rule 18a-5

Exchange Act rule 18a-5 requires SBS Entities to make and keep current various types of records. The requirements for SBS Entities without a prudential regulator are set forth in paragraph (a) of the rule.¹³⁵ The requirements for SBS Entities with a prudential regulator are set forth in paragraph (b) of the rule.¹³⁶ The Order makes substituted compliance available for the requirements of paragraph (b) of Exchange Act rule 18a-5 (subject to conditions and limitations). The Commission is making a preliminary positive substituted compliance determination for many of the requirements of paragraph (a) of Exchange Act rule 18a-5 and making preliminary positive substituted compliance determinations with respect to paragraph (b) in a more granular manner than the Order.¹³⁷

However, certain of the requirements in these paragraphs are linked to substantive Exchange Act requirements for which substituted compliance is not available or a positive substituted compliance would not be made under the proposed Amended Order. In these cases, a positive substituted compliance determination would not be made for the linked requirement in Exchange Act rule 18a-5 or the portion of the requirement in Exchange Act rule 18a-5 that is linked to the substantive Exchange Act requirement.¹³⁸

¹³⁴ See French Order, 86 FR 41650; UK Order, 86 FR 43361.

¹³⁵ See paras. (a)(1) through (18) of Exchange Act rule 18a-5.

¹³⁶ See paras. (b)(1) through (14) of Exchange Act rule 18a-6.

¹³⁷ See para. (f)(1) of the proposed Amended Order.

¹³⁸ A positive preliminary substituted compliance determination would not be made for the following requirements of Exchange Act rule 18a-5 because they are linked to a substantive Exchange Act requirement for which the proposed Amended Order would not provide substituted compliance: (1) The portion of Exchange Act rule 18a-5(a)(9) that relates to Exchange Act rule 18a-2 would be subject to the Rule 18a-2 Exclusion; (2) Exchange Act rules 18a-5(a)(13) and (14) and (b)(9) and (10) are fully linked to Exchange Act rule 18a-4 and, therefore, would be subject to the Rule 18a-4 Exclusion; (3) the portions of Exchange Act rules

In addition, certain of the requirements in Exchange Act rule 18a-5 are fully or partially linked to substantive Exchange Act requirements where a preliminary positive substituted compliance determination would be made under the proposed Amended Order. In these cases, substituted compliance with the requirement in Exchange Act rule 18a-5 would be conditioned on the Covered Entity applying substituted compliance to the linked substantive Exchange Act requirement.¹³⁹

Moreover, there are certain requirements in Exchange Act rule 18a-5 that are not expressly linked to Exchange Act rule 18a-1, but that would be important records in terms of the Commission’s ability to examine for compliance with that rule, and the Covered Entity’s ability to monitor its net capital position. Therefore, substituted compliance with respect to these requirements of Exchange Act rule 18a-5 would be subject to the condition that the Covered Entity applies substituted compliance for Exchange Act rule 18a-1 (*i.e.*, the Rule 18a-1 Condition).¹⁴⁰

In addition, the proposed Amended Order would allow a Covered Entity to apply substituted compliance on a transaction-by-transaction basis to the Commission’s recordkeeping

18a-5(a)(16) and (b)(12) that relate to Exchange Act rule 15Fh-6 would be subject to the Rule 15Fh-6 Exclusion; (4) the portions of Exchange Act rules 18a-5(a)(17) and (b)(13) that relate to Exchange Act rule 15Fh-4 would be subject to the Rule 15Fh-4 Exclusion; and (5) the portions of Exchange Act rules 18a-5(a)(17) and (b)(13) that relate to Exchange Act rule 15Fh-5 would be subject to the 15Fh-5 Exclusion.

¹³⁹ Substituted compliance with the following requirements of Exchange Act rule 18a-5 would be conditioned on the Covered Entity applying substituted compliance to the linked substantive Exchange Act requirement: (1) Exchange Act rules 18a-5(a)(6), (a)(15), (b)(6) and (b)(11) are linked to Exchange Act rule 15Fi-2 and, therefore, would be subject to the Rule 15Fi-2 Condition; (2) Exchange Act rule 18a-5(a)(9) is linked to Exchange Act rule 18a-1 and, therefore, would be subject to the Rule 18a-1 Condition; (3) Exchange Act rule 18a-5(a)(12) is linked to Exchange Act rule 18a-3 and, therefore, would be subject to the Rule 18a-3 Condition; (4) Exchange Act rules 18a-5(a)(17) and (b)(13) are linked to Exchange Act rule 15Fh-3 and, therefore, would be subject to the Rule 15Fh-3 Condition; (5) Exchange Act rules 18a-5(a)(17) and (b)(13) are linked to Exchange Act rule 15Fk-1 and, therefore, would be subject to the Rule 15Fk-1 Condition; (6) Exchange Act rules 18a-5(a)(18)(i) and (ii) and (b)(14)(i) and (ii) are linked to Exchange Act rule 15Fi-3 and, therefore, would be subject to the Rule 15Fi-3 Condition; and (7) Exchange Act rules 18a-5(a)(18)(iii) and (b)(14)(iii) are linked to Exchange Act rule 15Fi-4 and, therefore, would be subject to the Rule 15Fi-4 Condition.

¹⁴⁰ Substituted compliance with the requirements of Exchange Act rules 18a-5(a)(1), (2), (3), (4), (5), (7), (8), and (9) would be conditioned on the Covered Entity applying substituted compliance to Exchange Act rule 18a-1.

¹³³ See French Order, 86 FR 41650; UK Order, 86 FR 43361.

requirements that are linked with the counterparty protection requirements of Exchange Act rule 15Fh-3.¹⁴¹ This approach would align with the proposed Amended Order allowing Covered Entities to apply substituted compliance on a transaction-by-transaction basis for the Commission’s counterparty protection requirements.

Under the proposed Amended Order, substituted compliance in connection with the record making requirements of Exchange Act rule 18a-5 would be subject to the condition that the Covered Entity: (1) Preserves all of the data elements necessary to create the records required by Exchange Act rules 18a-5(a)(1), (2), (3), (4), and (7) (if not prudentially regulated) or Exchange Act rules 18a-5(b)(1), (2), (3), and (7) (if prudentially regulated); and (2) upon request furnishes promptly to representatives of the Commission the records required by those rules (“SEC

Format Condition”).¹⁴² This proposed condition is modeled on the alternative compliance mechanism in paragraph (c) of Exchange Act rule 18a-5. In effect, a Covered Entity applying substituted compliance with respect to these requirements of Exchange Act rule 18a-5 would need to comply with the comparable EU and German requirements. However, under the SEC Format Condition, the Covered Entity would need to produce a record that is formatted in accordance with the requirements of Exchange Act rule 18a-5 at the request of Commission staff. The objective would be to require—on a very limited basis—the production of a record that consolidates the information required by Exchange Act rules 18a-5(a)(1), (2), (3), (4), and (7) (if not prudentially regulated) or Exchange Act rules 18a-5(b)(1), (2), (3), and (7) (if prudentially regulated) in a single record and, as applicable, in a blotter or

ledger format. This would assist the Commission staff in reviewing the information on the record.

The following table summarizes the Commission’s preliminary positive substituted compliance determinations with respect to requirements of Exchange Act rule 18a-5 by listing in each row: (1) The paragraph of the proposed Amended Order that sets forth the preliminary determination; (2) the paragraph(s) of Exchange Act rule 18a-5 to which the preliminary determination applies; (3) a brief description of the records required by the paragraph(s); and (4) a brief description of any additional conditions to applying substituted compliance to the requirements, including any partial exclusions because portions of the requirements are linked to substantive Exchange Act requirements for which the proposed Amended Order would not provide substituted compliance.¹⁴³

EXCHANGE ACT RULE 18a-5
[Record making]

Order paragraph	Rule paragraph		Rule description	Additional conditions and partial exclusions
(f)(1)(i)(A)	(a)(1)	(b)(1)	Trade blotters	(1) SEC Format Condition. (2) Rule 18a-1 Condition for ¶(a)(1).
(f)(1)(i)(B)	(a)(2) .....	.....	General ledger	(1) SEC Format Condition. (2) Rule 18a-1 Condition for ¶(a)(2).
(f)(1)(i)(C)	(a)(3)	(b)(2)	Account ledgers	(1) SEC Format Condition. (2) Rule 18a-1 Condition for ¶(a)(3).
(f)(1)(i)(D)	(a)(4)	(b)(3)	Stock record	(1) SEC Format Condition. (2) Rule 18a-1 Condition for ¶(a)(4).
(f)(1)(i)(E) .....	.....	(b)(4)	Memoranda of brokerage orders.	N/A.
(f)(1)(i)(F)	(a)(5)	(b)(5)	Memoranda of proprietary orders.	Rule 18a-1 Condition for ¶(a)(5).
(f)(1)(i)(G)	(a)(6)	(b)(6)	Confirmations, trade verification	Rule 15Fi-2 Condition.
(f)(1)(i)(H)	(a)(15)	(b)(11)	Account holder information	(1) SEC Format Condition. (2) Rule 18a-1 Condition for ¶(a)(7).
(f)(1)(i)(I)	(a)(7)	(b)(7)	Options positions	Rule 18a-1 Condition.
(f)(1)(i)(J)	(a)(8) .....	.....	Trial balances, computation of net capital and tangible net worth.	(1) Rule 18a-1 Condition. (2) Rule 18a-2 Exclusion.
(f)(1)(i)(K)	(a)(9) .....	.....	Associated person’s employment application.	N/A.
(f)(1)(i)(L)	(a)(10)	(b)(8)	Non-cleared margin rule calculations.	Rule 18a-3 Condition.
(f)(1)(i)(M)	(a)(12) .....	.....	Compliance with business conduct requirements.	(1) Rule 15Fh-3 Condition. (2) Rule 15Fk-1 Condition. (3) Rule 15Fh-4 Exclusion. (4) Rule 15Fh-5 Exclusion.
(f)(1)(i)(N)	(a)(17)	(b)(13)	Portfolio reconciliation	Rule 15Fi-3 Condition.
(f)(1)(i)(O)	(a)(18)(i)	(b)(14)(i)	Portfolio compression	Rule 15Fi-4 Condition.
	(a)(18)(ii)	(b)(14)(ii)		
	(a)(18)(iii)	(b)(14)(iii)		

¹⁴¹ See para. (f)(1)(ii)(B) of the proposed Amended Order.

¹⁴² See para. (f)(1)(ii)(A) of the proposed Amended Order. The Order includes this condition for a Covered Entity with a prudential regulator to apply substituted compliance for Exchange Act rule 18a-5. The proposed Amended Order would extend

the scope of this condition to address Covered Entities without a prudential regulator applying substituted compliance for the requirements of Exchange Act rule 18a-5.

¹⁴³ The table does not include the proposed conditions for applying substituted compliance to Exchange Act rule 18a-5; namely that the Covered

Entity: (1) Must be subject to and comply with specified requirements of foreign law; and (2) as discussed below, must promptly furnish to a representative of the Commission upon request an English translation of a record. See para. (f)(8) of the proposed Amended Order (setting forth the English translation requirement).

The following table summarizes the Commission’s preliminary determinations with respect to requirements of Exchange Act rule 18a–5 for which a positive substituted compliance determination would not be made because they are fully linked to

substantive Exchange Act requirements for which the proposed Amended Order would not provide substituted compliance by listing in each row: (1) The paragraph of the proposed Amended Order that sets forth the determination; (2) the paragraphs of

Exchange Act rule 18a–5 to which the determination applies; (3) a brief description of the records required by the paragraphs; and (4) a brief description of why the requirement is excluded from substituted compliance.

EXCHANGE ACT RULE 18a–5

[Record making]

Order paragraph	Rule paragraph		Rule description	Exclusion
(f)(1)(ii)(C)	(a)(13)	(b)(9)	Possession or control records ..	Rule 18a–4 Exclusion.
(f)(1)(iii)(C)	(a)(14)	(b)(10)	Reserve computations	Rule 18a–4 Exclusion.
(f)(1)(ii)(C)	(a)(16)	(b)(12)	Political contribution records	Rule 15Fh–6 Exclusion.

3. Exchange Act Rule 18a–6

Exchange Act rule 18a–6 requires an SBS Entity to preserve certain types of records if it makes or receives them (in addition to the records the SBS Entity is required to make and keep current pursuant to Exchange Act rule 18a–5).¹⁴⁴ Exchange Act rule 18a–6 also prescribes the time period that these additional records and the records required to be made and kept current pursuant to Exchange Act rule 18a–5 must be preserved and the manner in which they must be preserved.

Paragraphs (a) through (d) of Exchange Act rule 18a–6 identify the records that an SBS Entity must retain if it makes or receives them and prescribes the retention periods for these records as well as for the records that must be made and kept current pursuant to Exchange Act rule 18a–5. Certain of these paragraphs prescribe requirements separately for SBS Entities without a prudential regulator and SBS Entities with a prudential regulator.¹⁴⁵ The Order makes substituted compliance available for the requirements of these paragraphs applicable to SBS Entities with a prudential regulator. As discussed below, the Commission is making a preliminary positive substituted compliance determination for many of the requirements of these paragraphs applicable to SBS Entities without a prudential regulator. Further, the Commission is making preliminary positive substituted compliance determinations for many of the requirements of these paragraphs applicable to SBS Entities with a

prudential regulator in a more granular manner than the Order.

However, certain of these requirements are fully or partially linked to substantive Exchange Act requirements for which a positive substituted compliance determination would not be made under the proposed Amended Order. In these cases, a positive substituted compliance determination would not be made for the linked requirement in Exchange Act rule 18a–6.¹⁴⁶

In addition, certain of the requirements in Exchange Act rule 18a–6 are fully or partially linked to substantive Exchange Act requirements where a positive substituted compliance determination would be made under the proposed Amended Order. In these cases, substituted compliance with the requirement in Exchange Act rule 18a–6 would be conditioned on the Covered Entity applying substituted compliance

to the linked substantive Exchange Act requirement.¹⁴⁷

Moreover, there are certain requirements in Exchange Act rule 18a–6 that are not expressly linked to Exchange Act rule 18a–1, but that would be important records in terms of the Commission’s ability to examine for compliance with that rule, and the Covered Entity’s ability to monitor its net capital position. Therefore, under the proposed Amended Order, substituted compliance for these requirements of Exchange Act rule 18a–6 would be subject to the Rule 18a–1 Condition.¹⁴⁸

Paragraph (e) of Exchange Act rule 18a–6 sets forth the requirements for

¹⁴⁷ Substituted compliance with the following requirements of Exchange Act rule 18a–6 would be conditioned on the Covered Entity applying substituted compliance to the linked substantive Exchange Act requirement: (1) Exchange Act rule 18a–6(b)(1)(v) is linked to Exchange Act rule 18a–1 and, therefore, would be subject to the Rule 18a–1 Condition; (2) Exchange Act rules 18a–6(b)(1)(viii) and (b)(2)(v) are linked to Exchange Act rule 18a–7 and, therefore, would be subject to the Rule 18a–7 Condition; (3) Exchange Act rule 18a–6(b)(1)(vii) is linked to Exchange Act rule 18a–1 and, therefore, would be subject to the Rule 18a–1 Condition; (4) Exchange Act rule 18a–6(b)(1)(ix) is linked to Exchange Act rule 18a–1 and, therefore, would be subject to the Rule 18a–1 Condition; (5) Exchange Act rule 18a–6(b)(1)(x) is linked to Exchange Act rule 18a–1 and, therefore, would be subject to the Rule 18a–1 Condition; (6) Exchange Act rules 18a–6(b)(1)(xii) and (b)(2)(vii) are linked to Exchange Act rule 15Fh–3 and, therefore, would be subject to the Rule 15Fh–3 Condition; (7) Exchange Act rules 18a–6(b)(1)(xii) and (b)(2)(vii) are linked to Exchange Act rule 15Fk–1 and, therefore, would be subject to the Rule 15Fk–1 Condition; (8) Exchange Act rules 18a–6(d)(4) and (d)(5) are linked to Exchange Act rule 15Fi–3 and, therefore, would be subject to the Rule 15Fi–3 Condition; (9) Exchange Act rules 18a–6(d)(4) and (d)(5) are linked to Exchange Act rule 15Fi–4 and, therefore, would be subject to the Rule 15Fi–4 Condition; and (10) Exchange Act rules 18a–6(d)(4) and (d)(5) are linked to Exchange Act rule 15Fi–5 and, therefore, would be subject to the Rule 15Fi–5 Condition.

¹⁴⁸ Substituted compliance with the requirements of Exchange Act rules 18a–6(b)(1)(ii), (b)(1)(iii), (b)(1)(vi), (b)(1)(vii), (d)(2)(i), and (d)(3)(i) would be conditioned on the Covered Entity applying substituted compliance to Exchange Act rule 18a–1.

¹⁴⁴ See 17 CFR 240.18a–6.

¹⁴⁵ Paras. (a)(1), (b)(1), (d)(2)(i), and (d)(3)(i) of Exchange Act rule 18a–6 apply to SBS Entities without a prudential regulator. Paras. (a)(2), (b)(2), (d)(2)(ii), and (d)(3)(ii) of Exchange Act rule 18a–6 apply to SBS Entities with a prudential regulator. Paras. (c), (d)(1), (d)(4), and (d)(5) of Exchange Act rule 18a–6 apply to SBS Entities irrespective of whether they have a prudential regulator.

¹⁴⁶ A positive substituted compliance determination would not be made for the following requirements of Exchange Act rule 18a–6 because they are linked to a substantive Exchange Act requirement for which the proposed Amended Order would not provide substituted compliance: (1) The portion of Exchange Act rule 18a–6(b)(1)(v) relating to Exchange Act rule 18a–2 would be subject to the Rule 18a–2 Exclusion; (2) Exchange Act rule 18a–6(b)(1)(viii)(L) is fully linked to Exchange Act Rule 18a–4 and, therefore, would be subject to the Rule 18a–4 Exclusion; (3) the portion of Exchange Act rule 18a–6(b)(1)(viii)(M) relating to Exchange Act rule 18a–2 would be subject to the Rule 18a–2 Exclusion; (4) Exchange Act rules 18a–6(b)(1)(xi) and (b)(2)(vi) are fully linked to Regulation SBSR and, therefore, would be subject to the Regulation SBSR Exclusion; (5) Exchange Act rules 18a–6(b)(1)(xiii) and 18a–6(b)(2)(viii) are fully linked to Exchange Act rules 15Fh–4 and, therefore, would be subject to the Rule 15Fh–4 Exclusion; (6) Exchange Act rules 18a–6(b)(1)(xiii) and 18a–6(b)(2)(viii) are fully linked to Exchange Act rule 15Fh–5 and, therefore, would be subject to the Rule 15Fh–5 Exclusion; (7) Exchange Act rule 18a–6(b)(2)(v) is fully linked to Exchange Act rule 18a–4 and, therefore, would be subject to the Rule 18a–4 Exclusion; and (8) the portion of Exchange Act rule 18a–6(c) relating to Form SBSE and its variations would be subject to the Form SBSE Exclusion.

preserving records electronically. Paragraph (f) sets forth requirements for when records are prepared or maintained by a third party. The Order makes substituted compliance available for the requirements of paragraphs (e) and (f) of Exchange Act rule 18a–6 if the Covered Entity has a prudential regulator. The proposed Amended Order would extend this treatment to Covered Entities without a prudential regulator.¹⁴⁹

Paragraph (g) of Exchange Act rule 18a–6 requires an SBS Entity to furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the SBS Entity that are required to be preserved under Exchange Act rule 18a–

6, or any other records of the SBS Entity that are subject to examination or required to be made or maintained pursuant to section 15F of the Exchange Act that are requested by a representative of the Commission. The Order does not make substituted compliance available for the requirements of paragraph (g) of Exchange Act rule 18a–6 because there is no comparable requirement in the EU or Germany to produce these records to a representative of the Commission. The proposed Amended Order similarly would not make substituted compliance available for paragraph (g) of Exchange Act rule 18a–6.

The following table summarizes the Commission’s preliminary positive

substituted compliance determinations with respect to requirements of Exchange Act rule 18a–6 by listing in each row: (1) The paragraph of the proposed Amended Order that sets forth the determination; (2) the paragraph(s) of Exchange Act rule 18a–6 to which the determination applies; (3) a brief description of the records required by the paragraph(s); and (4) a brief description of any additional conditions to applying substituted compliance to the requirements, including any partial exclusions because portions of the requirements are linked to substantive Exchange Act requirements for which the proposed Amended Order would not provide substituted compliance.¹⁵⁰

EXCHANGE ACT RULE 18a–6

[Record preservation]

Order paragraph	Rule paragraph		Rule description	Conditions and partial exclusions
(f)(2)(i)(A)	(a)(1)	(a)(2)	6 year record preservation	N/A.
(f)(2)(i)(B)	(b)(1)(i)	(b)(2)(i)	3 year record preservation	N/A.
(f)(2)(i)(C)	(b)(1)(ii) .....	.....	Bank records, bills	Rule 18a–1 Condition.
	(b)(1)(iii)			
(f)(2)(i)(D)	(b)(1)(iv)	(b)(2)(ii)	Communications	N/A.
(f)(2)(i)(E)	(b)(1)(v) .....	.....	Trial balances	(1) Rule 18a–1 Condition.
				(2) Rule 18a–2 Exclusion.
(f)(2)(i)(F)	(b)(1)(vi)	(b)(2)(iii)	Account documents	Rule 18a–1 Condition for ¶(b)(1)(vi).
(f)(2)(i)(G)	(b)(1)(vii)	(b)(2)(iv)	Written agreements	Rule 18a–1 Condition for ¶(b)(1)(vii).
(f)(2)(i)(H)	(b)(1)(viii) .....	.....	Information supporting financial reports.	(1) Rule 18a–7 Condition.
				(2) Rule 18a–4 Exclusion for ¶(b)(1)(viii)(L).
				(3) Rule 18a–2 Exclusion for ¶(b)(1)(viii)(M).
(f)(2)(i)(I)	(b)(1)(ix) .....	.....	Rule 15c3–4 risk management records.	Rule 18a–1 Condition.
(f)(2)(i)(J)	(b)(1)(x) .....	.....	Credit risk determinations	(1) Rule 15Fh–3 Condition.
(f)(2)(i)(K)	(b)(1)(xii)	(b)(2)(vii)	Business conduct standard records.	(2) Rule 15Fk–1 Condition.
(f)(2)(i)(L)	(c)		Corporate documents	Form SBSE Exclusion.
(f)(2)(i)(M)	(d)(1)		Associated person’s employment application.	N/A.
(f)(2)(i)(N)	(d)(2)(i)	(d)(2)(ii)	Regulatory authority reports	Rule 18a–1 Condition for ¶(d)(2)(i).
(f)(2)(i)(O)	(d)(3)(i)	(d)(3)(ii)	Compliance, supervisory, and procedures manuals.	Rule 18a–1 Condition for ¶(d)(3)(i).
(f)(2)(i)(P)	(d)(4) (d)(5)		Portfolio reconciliation	(1) Rule 15Fi–3 Condition.
				(2) Rule 15Fi–4 Condition.
				(3) Rule 15Fi–5 Condition.
(f)(2)(i)(Q)	(e)		Electronic storage system	N/A.
(f)(2)(i)(R)	(f)		Third-party recordkeeper	N/A.

The following table summarizes the Commission’s preliminary determinations with respect to requirements of Exchange Act rule 18a–6 for which a positive substituted

compliance determination would not be made because they are fully linked to substantive Exchange Act requirements for which the proposed Amended Order would not provide substituted

compliance by listing in each row: (1) The paragraph of the proposed Amended Order that sets forth the determination; (2) the paragraph(s) of Exchange Act rule 18a–6 to which the

¹⁴⁹ See paras. (f)(2)(i)(Q) and (R) of the proposed Amended Order.

¹⁵⁰ The table does not include the proposed conditions for applying substituted compliance to

Exchange Act rule 18a–6; namely that the Covered Entity: (1) Must be subject to and complies with the requirements of foreign law; and (2) must promptly furnish to a representative of the Commission upon

request an English translation of a record. See para. (f)(8) of the proposed Amended Order (setting forth the English translation requirement).

determination applies; (3) a brief description of the records required by the paragraph(s); and (4) a brief

description of why the requirement is excluded from substituted compliance.

EXCHANGE ACT RULE 18a-6
[Preservation]

Order paragraph	Rule paragraph		Rule description	Exclusion
(f)(2)(ii)	(b)(1)(xi)	(b)(2)(vi)	Regulation SBSR information ...	Regulation SBSR Exclusion. Rule 18a-4 Exclusion.
(f)(2)(i)(H) .....	.....	(b)(2)(v)	Information supporting financial reports.	
(f)(2)(ii)	(b)(1)(xiii)	(b)(2)(viii)	Special entity documents	(1) Rule 15Fh-4 Exclusion. (2) Rule 15Fh-5 Exclusion.

4. Exchange Act Rule 18a-7

Exchange Act rule 18a-7 requires SBS Entities, on a monthly basis (if not prudentially regulated) or on a quarterly basis (if prudentially regulated), to file an unaudited financial and operational report on the FOCUS Report Part II (if not prudentially regulated) or Part IIC (if prudentially regulated). The Commission will use the FOCUS Reports filed by the SBS Entities to both monitor the financial and operational condition of individual SBS Entities and to perform comparisons across SBS Entities. The FOCUS Report Part IIC elicits less information than the FOCUS Report Part II because the Commission does not have responsibility for overseeing the capital and margin requirements applicable to these entities.

The FOCUS Report Parts II and IIC are standardized forms that elicit specific information through numbered line items. This facilitates cross-firm analysis and comprehensive monitoring of all SBS Entities registered with the Commission. Further, the Commission has designated the Financial Industry Regulatory Authority, Inc. (“FINRA”) to receive the FOCUS Reports from SBS Entities.¹⁵¹ Broker-dealers registered with the Commission currently file their FOCUS Reports with FINRA through the eFOCUS system it administers. Using FINRA’s eFOCUS system will enable broker-dealers, security-based swap dealers, and major security-based swap participants to file FOCUS Reports on the same platform using the same preexisting templates, software, and procedures.

Paragraph (a)(2) of Exchange Act rule 18a-7 requires SBS Entities with a prudential regulator to file the FOCUS Report Part IIC on a quarterly basis. The

Order provides substituted compliance for this requirement subject to the condition that the Covered Entity file with the Commission periodic unaudited financial and operational information in the manner and format specified by the Commission by order or rule (“Manner and Format Condition”) and present the financial information in accordance with GAAP that the firm uses to prepare general purpose publicly available or available to be issued financial statements in Germany (“German GAAP Condition”).¹⁵² The proposed Amended Order would continue to provide Covered Entities with a prudential regulator substituted compliance for paragraph (a)(2) of Exchange Act rule 18a-7, subject to the Manner and Format and German GAAP Conditions.¹⁵³ The Commission continues to believe that it would be appropriate to condition substituted compliance with respect to Exchange Act rule 18a-7 on the Covered Entity filing unaudited financial and operational information in a manner and format that facilitates cross-firm analysis and comprehensive monitoring of all SBS Entities registered with the Commission.¹⁵⁴ For example, the Commission could by order or rule require SBS Entities to file the financial and operational information with FINRA using the FOCUS Report Part II (if not prudentially regulated) or Part IIC (if prudentially regulated) but permit

the information input into the form to be the same information the SBS Entity reports to EU and German authorities.

Paragraph (a)(1) of Exchange Act rule 18a-7 requires SBS Entities without a prudential regulator to file the FOCUS Report Part II on a monthly basis. The proposed Amended Order would provide Covered Entities without a prudential regulator substituted compliance for paragraph (a)(1) of Exchange Act rule 18a-7 subject to the Manner and Format and German GAAP conditions.¹⁵⁵ However, there would be two additional conditions. First, for the reasons discussed above, the Covered Entity would need to apply substituted compliance for Exchange Act Rule 18a-1 (*i.e.*, substituted compliance would be subject to the Rule 18a-1 Condition).¹⁵⁶ Second, the Covered Entity would need to apply substituted compliance with respect to Exchange Act rule 18a-6(b)(1)(viii) (a record preservation requirement) (“Rule 18a-6(b)(1)(viii) Condition”).¹⁵⁷ This record preservation requirement is directly linked to the financial and operational reporting requirements of Exchange Act rule 18a-7(a)(1).

Paragraph (a)(3) of Exchange Act rule 18a-7 requires SBS Entities without a prudential regulator that have been authorized by the Commission to compute net capital under Exchange Act rule 18a-1 using models to file certain monthly or quarterly information related to their use of models.¹⁵⁸ Paragraph (b) of Exchange Act rule 18a-7 requires SBS Entities that are not prudentially regulated to make certain financial information available on their

¹⁵¹ See Order Designating Financial Industry Regulatory Authority, Inc., to Receive Form X-17A-5 (FOCUS Report) from Certain Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 88866 (May 14, 2020).

¹⁵² Under the Order, Covered Entities with a prudential regulator must present the information reported in the FOCUS Report in accordance with GAAP that the firm uses to prepare publicly available or available to be issued general purpose financial statements in its home jurisdiction instead of U.S. GAAP if other GAAP, such as International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IASB), is used by the Covered Entity in preparing publicly available or available to be issued general purpose financial statements in Germany.

¹⁵³ See para. (f)(3)(i) of the proposed Amended Order.

¹⁵⁴ In addition to the Order, the Manner and Format condition is included in the French and UK Orders. See French Order, 86 FR 41651; UK Order, 86 FR 43361-62.

¹⁵⁵ See para. (f)(3)(i) of the proposed Amended Order.

¹⁵⁶ See para. (f)(3)(i)(C) of the proposed Amended Order. See part VII.B.1, *supra* (discussing how certain recordkeeping and reporting requirements are expressly linked to or important for examining compliance with Rule 18a-1 condition).

¹⁵⁷ See para. (f)(3)(i)(D) of the proposed Amended Order.

¹⁵⁸ See 17 CFR 240.18a-7(a)(3).

websites.¹⁵⁹ Paragraphs (c), (d), (e), (f), (g), and (h) of Exchange Act rule 18a-7 set forth requirements for SBS Entities that are not prudentially regulated to annually file financial statements and certain reports, as well as reports covering those statements and reports prepared by an independent public accountant.¹⁶⁰ Paragraph (i) of Exchange Act rule 18a-7 requires SBS Entities that do not have a prudential regulator to notify the Commission when they change their fiscal year.¹⁶¹ Finally, Paragraph (j) of Exchange Act rule 18a-7 sets forth requirements with respect to the reports that must be filed with the Commission under the rule.¹⁶²

The Commission preliminarily is making a positive substituted compliance determination for paragraphs (b) through (j) of Exchange Act rule 18a-7. As discussed below, substituted compliance with respect to these paragraphs of Exchange Act rule 18a-7 would be subject to certain conditions and limitations.

First, certain of the requirements in Exchange Act rule 18a-7 are fully or partially linked to substantive Exchange Act requirements for which a positive substituted compliance determination would be made under the proposed Amended Order. In these cases, substituted compliance with the requirement in Exchange Act rule 18a-7 would be conditioned on the Covered Entity applying substituted compliance to the linked substantive Exchange Act requirement.¹⁶³

Second, under the proposed Amended Order, substituted compliance in connection with the requirement that Covered Entities without a prudential regulator file audited annual reports under Exchange Act rule 18a-7 would be subject to six conditions.¹⁶⁴ The first condition would

be that the Covered Entity simultaneously sends a copy of the financial statements the Covered Entity is required to file with EU or German authorities, including a report of an independent public accountant covering the financial statements, to the Commission in the manner specified on the Commission's website ("SEC Filing Condition"). Because EU and German laws would not otherwise require the financial statements and report of the independent public accountant covering the financial statements to be filed with the Commission, the purpose of this condition would be to provide the Commission with the financial statements and report to more effectively supervise and monitor Covered Entities.

The second condition would be that the Covered Entity include with the transmission of the annual financial statements and report the contact information of an individual who can provide further information about the financial statements and reports ("Contact Information Condition"). This would assist the Commission staff in promptly contacting an individual at the Covered Entity who can respond to questions that information on the financial statements or report may raise about the Covered Entity's financial or operational condition.

The third condition would be that the Covered Entity includes with the transmission the report of an independent public accountant required by Exchange Act rule 18a-7(c)(1)(i)(C) covering the annual financial statements if EU and German laws do not require the Covered Entity to engage an independent public accountant to prepare a report covering the annual financial statements ("Accountant's Report Condition"). The third condition further would provide that the report of the independent public accountant may be prepared in accordance with generally accepted auditing standards ("GAAS") in Germany that are used to perform audit and attestation services and the accountant complies with German independence requirements. According to the BaFin Application, German laws only require certain investment firms (depending on their size) to have their financial statements audited, so this condition would be designed to ensure that all SBS Entities subject to the requirement in rule 18a-7 to file audited annual reports are required to have their financial statements audited.

The fourth condition would be that a Covered Entity that is a security-based swap dealer would need to file the reports required by Exchange Act rule

18a-7(c)(1)(i)(B) and (C) addressing the statements identified in Exchange Act rule 18a-7(c)(3) or (c)(4), as applicable, that relate to Exchange Act rule 18a-4 ("Rule 18a-4 Limited Exclusion").¹⁶⁵ These reports are designed to provide the Commission with information about an SBS Entity's compliance with Rule 18a-4. Substituted compliance is not available for Exchange Act rule 18a-4 and, therefore, this condition is designed to provide the Commission with similar compliance information. Under this condition, Covered Entities would need to file a limited compliance report that includes the statements relating to Rule 18a-4¹⁶⁶ or an exemption report if the Covered Entity claims an exemption from Rule 18a-4. The Covered Entity also would need to file the report of an independent public accountant covering the limited compliance report or exemption report. The fourth condition further would provide that the report of the independent public accountant may be prepared in accordance with GAAS in Germany that are used to perform audit and attestation services and the accountant complies with German independence requirements.

The fifth condition would be that a Covered Entity that is a major security-based swap participant would need to file the supporting schedules required by Exchange Act rule 18a-7(c)(1)(i)(A) and (C) addressing the statements identified in Exchange Act rules 18a-7(c)(2)(ii) and (iii) that relate to Exchange Act rule 18a-2 for which the proposed Amended Order would not provide substituted compliance. These supporting schedules are the Computation of Tangible Net Worth.

The sixth condition would be that a Covered Entity that is a security-based swap dealer would need to file the supporting schedules required by Exchange Act rule 18a-7(c)(1)(i)(A) and (C) addressing the statements identified

¹⁶⁵ The Commission views this as a limited exclusion from the availability of substituted compliance for these requirements because the proposed Amended Order would permit these reports relating Exchange Act rule 18a-4 to be included with the German regulatory reports the Covered Entities will file with the Commission and because the reports could be prepared in accordance with German GAAS (as discussed below).

¹⁶⁶ The limited compliance report would not need to address Exchange Act rule 18a-9 if the Covered Entity is applying substituted compliance to this requirement. Further, as discussed above, substituted compliance with paras. (c) through (h) of Exchange Act rule 18a-7 is conditioned on the Covered Entity applying substituted compliance to Exchange Act rule 18a-1. Therefore, the Covered Entity would not need to address that rule in the compliance report. Finally, the Covered Entity would not need to address an account statement rule of a self-regulatory organization.

¹⁵⁹ See 17 CFR 240.18a-7(b).

¹⁶⁰ See 17 CFR 240.18a-7(c) through (h).

¹⁶¹ See 17 CFR 240.18a-7(i).

¹⁶² See 17 CFR 240.18a-7(j).

¹⁶³ Substituted compliance with the following requirements of Exchange Act rule 18a-7 would be conditioned on the Covered Entity applying substituted compliance to the linked substantive Exchange Act requirement: (1) Exchange Act rule 18a-7(a)(1) is linked to Exchange Act rules 18a-1 and 18a-6(b)(1)(viii) and, therefore, would be subject to the Rule 18a-1 Condition and the Rule 18a-6(b)(1)(viii) Condition; (2) Exchange Act rule 18a-7(a)(3) is linked to Exchange Act rule 18a-1 and, therefore, would be subject to the Rule 18a-1 Condition; (3) Exchange Act rule 18a-7(b) is linked to Exchange Act rule 18a-6(b)(1)(viii) and, therefore, would be subject to the Rule 18a-6(b)(1)(viii) Condition; and (4) Exchange Act rules 18a-7(c), (d), (e), (f), (g) and (h) taken as a whole are linked to Exchange Act rules 18a-1 and 18a-6(b)(1)(viii) and, therefore, would be subject to the Rule 18a-1 Condition and the Rule 18a-6(b)(1)(viii) Condition.

¹⁶⁴ See para. (f)(3)(iv)(B) to the proposed Amended Order.

in Exchange Act rules 18a-7(c)(2)(ii) and (iii) that relate to Exchange Act rule 18a-4 and 18a-4a if the Covered Entity is not exempt from Exchange Act rule 18a-4 (*i.e.*, the Rule 18a-4 Limited Exclusion). These supporting schedules are the Computation for Determination of Security-Based Swap Customer Reserve Requirements and the Information Relating to the Possession or Control Requirements for Security-Based Swap Customers, which are designed to provide the Commission

with information about an SBS Entity's compliance with Rule 18a-4. Substituted compliance for Exchange Act rule 18a-4 is not available.

The following table summarizes the Commission's proposed preliminary positive substituted compliance determinations with respect to requirements of Exchange Act rule 18a-7 by listing in each row: (1) The paragraph of the proposed Amended Order that sets forth the determination; (2) the paragraph(s) of Exchange Act

rule 18a-7 to which the determination applies; (3) a brief description of the records required by the paragraph(s); and (4) a brief description of any additional conditions to applying substituted compliance to the requirements, including any partial exclusions because portions of the requirements are linked to substantive Exchange Act requirements for which the proposed Amended Order would not provide substituted compliance.¹⁶⁷

EXCHANGE ACT RULE 18a-7
[Reporting]

Order paragraph	Rule paragraph		Rule description	Conditions and partial exclusions
(f)(3)(i)	(a)(1)	(a)(2)	File FOCUS Reports	(1) Manner and Format Condition. (2) German GAAP Condition. (3) Rule 18a-1 Condition for ¶(a)(1). (4) Rule 18a-6(b)(1)(viii) Condition for ¶(a)(1).
(f)(3)(ii)	(a)(3) .....	.....	Information related to capital models.	(1) Rule 18a-1 Condition.
(f)(3)(iii)	(b) .....	.....	Publish certain financial information.	(1) Rule 18a-6(b)(1)(viii) Condition.
(f)(3)(iv)	(c) .....	.....	File annual audited reports	(1) SEC Filing Condition. (2) Contact Information Condition. (3) Accountant's Report Condition. (4) Rule 18a-4 Limited Exclusion. (5) Supporting Schedules Condition. (6) Rule 18a-1 Condition. (7) Rule 18a-6(b)(1)(viii) Condition.
	(d)			
	(e)			
	(f)			
	(g)			
	(h)			

5. Exchange Act Rule 18a-8

Exchange Act rule 18a-8 requires SBS Entities to send notifications to the Commission if certain adverse events occur.¹⁶⁸ The Order provides substituted compliance for the requirements of Exchange Act rule 18a-8 applicable to SBS Entities with a prudential regulator (subject to conditions and limitations). In particular, the requirements of: (1) Paragraph (c) of Exchange Act rule 18a-8 that an SBS Entity that is a security-based swap dealer and that files a notice of adjustment to its reported capital category with a U.S. prudential regulator must transmit a copy of the notice to the Commission; (2) paragraph (d) of the rule that an SBS Entity provide notification to the Commission if it fails to make and keep current books and records under Exchange Act rule 18a-5 and to transmit a subsequent report on steps being taken to correct the situation; (3) and paragraph (h) of the rule setting forth how to make the

notifications required by Exchange Act 18a-8.

Under the Order, substituted compliance in connection with the notification requirements of Exchange Act rule 18a-8 are subject to the conditions that the Covered Entity: (1) Simultaneously sends a copy of any notice required to be sent by EU or German notification laws to the Commission in the manner specified on the Commission's website (*i.e.*, the "SEC Filing Condition"); and (2) includes with the transmission the contact information of an individual who can provide further information about the matter that is the subject of the notice (*i.e.*, the "Contact Information Condition"). The purpose of these conditions is to alert the Commission to financial or operational problems that could adversely affect the firm—the objective of Exchange Act rule 18a-8. In addition, the Order does not provide substituted compliance for paragraph (g) of Exchange Act rule 18a-8 that an SBS Entity that is a security-based swap dealer provide notification if it fails to

make a required deposit into its special reserve account for the exclusive benefit of security-based swap customers under Exchange Act rule 18a-4. Substituted compliance is not available for Exchange Act rule 18a-4.

The proposed Amended Order would continue to provide Covered Entities with a prudential regulator substituted compliance for the notification requirements of Exchange Act rule 18a-8 discussed above subject to the conditions and limitations. However, the substituted compliance determinations would be made on a more granular basis. Further, the proposed Amended Order would provide Covered Entities without a prudential regulator substituted compliance for these notification requirements (also on a granular basis), subject to the SEC Filing and Contact Information Conditions. The proposed Amended Order also would apply the limitation with respect to the notification requirements linked to Exchange Act rule 18a-4 to Covered Entities without a prudential regulator.

¹⁶⁷ The chart below does not include the proposed conditions for applying substituted compliance to Exchange Act rule 18a-7; namely that the Covered Entity: (1) Must be subject to and

comply with specified requirements of foreign law; and (2) must promptly furnish to a representative of the Commission upon request an English translation of a report. See para. (f)(8) of the

proposed Amended Order (setting forth the English translation requirement).

¹⁶⁸ See 17 CFR 240.18a-8.

Exchange Act rule 18a–8 has notification requirements that apply exclusively to Covered Entities without a prudential regulator. In particular, paragraphs (a)(1)(i), (a)(1)(ii), (b)(1), (b)(2), and (b)(4) of Exchange Act rule 18a–8 require an SBS Entity that is a security-based swap dealer and that does not have a prudential regulator to provide notifications related to the capital requirements of Exchange Act rule 18a–1. Paragraphs (a)(2) and (b)(3) of Exchange Act rule 18a–8 require an SBS Entity that is a major security-based swap participant and that does not have a prudential regulator to provide notifications related to the capital requirements of Exchange Act rule 18a–2. Paragraph (e) of Exchange Act rule 18a–8, in pertinent part, requires an SBS Entity that is a security-based swap dealer and that does not have a prudential regulator to provide notification if it has a material weakness under Exchange Act rule 18a–7 and to transmit a subsequent report on the

steps being taken to correct the situation.

The Commission is preliminarily making a positive substituted compliance determination for a number of the notification requirements set forth in these paragraphs, subject to the SEC Filing and Contact Information Conditions. However, certain of these requirements are linked to substantive Exchange Act requirements for which the proposed Amended Order would not provide substituted compliance. In these cases, a positive substituted compliance determination would not be made for the linked requirement in Exchange Act rule 18a–8 or the portion of the requirement in Exchange Act rule 18a–8 that is linked to the substantive Exchange Act requirement.¹⁶⁹

In addition, certain of the requirements in Exchange Act rule 18a–8 are fully or partially linked to substantive Exchange Act requirements where a positive substituted compliance determination would be made under the proposed Amended Order. In these

cases, substituted compliance with the requirement in Exchange Act rule 18a–8 would be conditioned on the SBS Entity applying substituted compliance to the linked substantive Exchange Act requirement.¹⁷⁰

The following table summarizes the Commission’s proposed preliminary positive substituted compliance determinations with respect to requirements of Exchange Act rule 18a–8 by listing in each row: (1) The paragraph of the proposed Amended Order that sets forth the determination; (2) the paragraph(s) of Exchange Act rule 18a–8 to which the determination applies; (3) a brief description of the notifications required by the paragraph(s); and (4) a brief description of any additional conditions to applying substituted compliance to the requirements, including any partial exclusions because portions of the requirements are linked to substantive Exchange Act requirements for which the proposed Amended Order would not provide substituted compliance.¹⁷¹

EXCHANGE ACT RULE 18a–8
[Notification]

Order paragraph	Rule paragraph	Rule description	Conditions and partial exclusions
(f)(4)(i)(A)	(a)(1)(i) (a)(1)(ii) (b)(1) (b)(2) (b)(4) (c)	Capital notices	(1) Rule 18a–1 Condition. (2) SEC Filing Condition. (3) Contact Information Condition.
(f)(4)(i)(B)	(d)	Prudential regulator capital category adjustment notices.	(1) SEC Filing Condition. (2) Contact Information Condition.
(f)(4)(i)(C)	(e)	Books and records notices	(1) Rule 18a–5 Condition. (2) SEC Filing Condition. (3) Contact Information Condition.
(f)(4)(i)(D)	(f)	Material weakness notices	(1) Rule 18a–1 Condition. (2) Rule 18a–2 Exclusion. (3) Rule 18a–4 Limited Exclusion. (4) SEC Filing Condition. (5) Contact Information Condition.

The following table summarizes the Commission’s preliminary determinations with respect to requirements of Exchange Act rule 18a–8 for which a positive substituted

compliance determination would not be made because they are fully linked to substantive Exchange Act requirements for which the proposed Amended Order would not provide substituted

compliance by listing in each row: (1) The paragraph of the proposed Amended Order that sets forth the determination; (2) the paragraph(s) of Exchange Act rule 18a–8 to which the

¹⁶⁹ A positive substituted compliance determination would not be made for the following requirements of Exchange Act rule 18a–8 because they are linked to a substantive Exchange Act requirement for which a positive substituted compliance determination is not being made: (1) Exchange Act rules 18a–8(a)(3) and (b)(3) are fully linked to Exchange Act rule 18a–2 and, therefore, would be subject to the Rule 18a–2 Exclusion; (2) the portion of Exchange Act rule 18a–8(e) that relates to Exchange Act rule 18a–2 would be subject to the Rule 18a–2 Exclusion; (3) the portion of Exchange Act rule 18a–8(e) that relates to Exchange Act rule 18a–4 would be subject to the Rule 18a–4 Exclusion; and (4) Exchange Act rule 18a–8(g) is fully linked to Exchange act rule 18a–4 and,

therefore, would be subject to the Rule 18a–4 Exclusion.

¹⁷⁰ Substituted compliance with the following requirements of Exchange Act rule 18a–8 would be conditioned on the Covered Entity applying substituted compliance to the linked substantive Exchange Act requirement: (1) Exchange Act rules 18a–8(a)(1)(i) and (ii), (b)(1), (b)(2), and (b)(4) are linked to Exchange Act rule 18a–1 and, therefore, would be subject to the Rule 18a–1 Condition; and (2) Exchange Act rule 18a–8(d) is linked to Exchange Act rule 18a–5 and, therefore, would be subject to the Rule 18a–5 Condition with respect to any category of records required to be made and kept current by that rule. With respect to Exchange Act rule 18a–8(d), if the Covered Entity does not apply

substituted compliance with respect to a category of record required to be made and kept current by Exchange Act rule 18a–5, the Covered Entity would need to provide the notification required by Exchange Act rule 18a–8(d) if it fails to make and keep current that category of record.

¹⁷¹ The chart below does not include the proposed conditions for applying substituted compliance to Exchange Act rule 18a–8; namely that the Covered Entity: (1) Must be subject to and comply with specified requirements of foreign law; and (2) must promptly furnish to a representative of the Commission upon request an English translation of a notification. See para. (f)(8) of the proposed Amended Order (setting forth the English translation requirement).

determination applies; (3) a brief description of the records required by

the paragraph(s); and (4) the exclusion from substituted compliance.

EXCHANGE ACT RULE 18a–8
[Notification]

Order paragraph	Rule paragraph		Rule description	Exclusion
(f)(4)(ii)(B)	(a)(2)	(b)(3)	MSBSP capital notices	Rule 18a–2 Exclusion.
(f)(4)(ii)(C)	(g) .....	.....	Reserve account notices	Rule 18a–4 Exclusion.

6. Exchange Act Rule 18a–9

Exchange Act rule 18a–9 requires SBS Entities that are security-based swap dealers without a prudential regulator to examine and count the securities they physically hold, account for the securities that are subject to their control or direction but are not in their physical possession, verify the locations of securities under certain circumstances, and compare the results of the count and verification with their records.¹⁷² The Commission preliminarily believes EU and German laws produce a comparable result in terms of securities count requirements.¹⁷³ Accordingly, the Commission preliminarily is making a positive substituted compliance determination for this rule.¹⁷⁴

7. Exchange Act Section 15F(g)

Exchange Act Section 15F(g) requires SBS Entities to maintain daily trading records.¹⁷⁵ The Commission preliminarily believes EU and German laws produce a comparable result in terms of daily trading recordkeeping requirements.¹⁷⁶ Accordingly, the Commission preliminarily is making a positive substituted compliance determination for the self-executing requirements in this statute.¹⁷⁷

8. Examination and Production of Records

The Order does not extend to, and Covered Entities remain subject to, the requirement of Exchange Act section 15F(f) to keep books and records open to inspection by any representative of the Commission and the requirement of Exchange Act rule 18a–6(g) to furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the

Covered Entity that are required to be preserved under Exchange Act rule 18a–6, or any other records of the Covered Entity that are subject to examination or required to be made or maintained pursuant to Exchange Act section 15F that are requested by a representative of the Commission.¹⁷⁸ The proposed Amended Order similarly would not extend substituted compliance to these inspection and production requirements.¹⁷⁹

Consequently, every Covered Entity registered with the Commission, whether complying directly with Exchange Act requirements or relying on substituted compliance as a means of complying with the Exchange Act, is required to satisfy the inspection and production requirements imposed on such entities under the Exchange Act. Covered Entities may make, keep, and preserve records, subject to the conditions described above, in a manner prescribed by applicable EU and German requirements. BaFin has provided the Commission with adequate assurances that no law or policy would impede the ability of any entity that is directly supervised by the authority and that may register with the Commission to provide prompt access to the Commission to such entity’s books and records or to submit to onsite inspection or examination by the Commission. Consistent with those assurances and the requirements that apply to all Covered Entities under the Exchange Act, Covered Entities operating under the proposed Amended Order would need to keep books and records open to inspection by any representative of the Commission and to furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the firm that these entities are required to preserve under Exchange Act rule 18a–6 (which would include records for which a positive substituted compliance

determination is being made with respect to Exchange Act rule 18a–6 under the Order), or any other records of the firm that are subject to examination or required to be made or maintained pursuant to Exchange Act section 15F that are requested by a representative of the Commission.

9. English Translations

The proposed Amended Order provides that to the extent documents are not prepared in the English language, Covered Entities would need to furnish to a representative of the Commission upon request an English translation of any record, report, or notification of the Covered Entity that is required to be made, preserved, filed, or subject to examination pursuant to Exchange Act section 15F or the German Order.¹⁸⁰ This proposed condition would be designed to address difficulties that Commission examinations staff would have examining Covered Entities that furnish documents in a foreign language. The English translations would need to be provided promptly. This condition is included in the French and UK Orders.¹⁸¹

VIII. Additional Considerations Regarding Supervisory and Enforcement Effectiveness Related to Capital and Margin

A. General Considerations

Exchange Act rule 3a71–6 provides that the Commission’s assessment of the comparability of the requirements of the foreign financial regulatory system take into account “the effectiveness of the supervisory program administered, and the enforcement authority exercised” by the foreign financial regulatory authority. This prerequisite accounts for the understanding that substituted compliance determinations should reflect the reality of the foreign regulatory framework, in that rules that appear high-quality on paper nonetheless should not form the basis

¹⁷² See 17 CFR 240.18a–9.

¹⁷³ See EMIR article 11(1)(b); EMIR RTS articles 12 and 13; WpHG section 84; HGB sections 316 and 325; and WpHG section 89 (1) sentence 1 no. 1.

¹⁷⁴ See para. (f)(5) to the proposed Amended Order.

¹⁷⁵ See 15 U.S.C. 78o–10(g).

¹⁷⁶ See WpHG section 83 para. 1; and MiFID Org Reg article 21(1)(f), 21(4), and 72(1)

¹⁷⁷ See para. (f)(6) to the proposed Amended Order.

¹⁷⁸ See Exchange Act section 15F(f); Exchange Act rule 18a–6(g). The French and UK Orders do not extend substituted compliance to these requirements. See French Order, 86 FR 41650; UK Order, 86 FR 43361.

¹⁷⁹ See para. (f)(7) to the proposed Amended Order.

¹⁸⁰ See para. (f)(8) to the proposed Amended Order.

¹⁸¹ See French Order, 86 FR 41651; UK Order, 86 FR 43361.

for substituted compliance if—in practice—market participants are permitted to fall short of their regulatory obligations. This prerequisite, however, also recognizes that differences among the supervisory and enforcement regimes should not be assumed to reflect flaws in one regime or another.¹⁸²

In the substituted compliance Order for Germany the Commission concluded that “the relevant supervisory and enforcement considerations in Germany are consistent with substituted compliance.”¹⁸³ In its amended application, BaFin provided the Commission with additional information on the supervision and enforcement framework for compliance with capital and margin requirements applicable to significant credit institutions. For purposes of the supervision of capital and margin by Germany, the Commission preliminary believes that the relevant supervisory and enforcement considerations for capital and margin in Germany are consistent with substituted compliance.

In preliminarily concluding that the relevant supervisory and enforcement considerations are consistent with substituted compliance, the Commission has considered the supervision and enforcement framework described in the Order as well as the following factors:¹⁸⁴

B. Supervisory and Enforcement Framework in Germany

The ECB, through its single supervisory mechanism (“SSM”) and executed by joint supervisory teams (“JSTs”), supervises firms for compliance with the CRD and CRR, including all capital requirements. The JSTs comprise of ECB staff, BaFin staff, and staff from other countries in the EU where the significant institution has a subsidiary or branch.¹⁸⁵ For each firm, the JST conducts a Supervisory Review and Evaluation Process (“SREP”), which measures the risks for each bank. The SREP shows where a firm stands in terms of capital requirements and the way it handles risks. To develop the

SREP, supervisors review the sustainability of each firm’s business model, governance and risk management by the firm, capital risks (credit, market, operational, rate in the banking book and equity risks), and liquidity and funding risks. Once the SREP is developed, the firm will receive a letter setting forth specific measures that must be implemented the following year based on the firm’s individual profile. For example, the SREP may ask the firm to hold additional capital or set forth qualitative requirements related to the firm’s governance structure or management. After these supervisory measures are imposed, the JST will monitor the credit institutions to ensure that it establishes compliance with the regulatory framework and supervisory measures taken. If a credit institution does not comply with such measures, additional actions are considered. Available actions for the JST range from informal communication with the supervised entity to enforcement measures or sanctions.

Misconduct detected by the JSTs is addressed primarily by the ECB. The ECB has the power to enforce violations and to impose fines on supervised entities for breaches of directly applicable European Union law. The ECB can also ask national competent authorities (such as BaFin) to open proceedings that may lead to the imposition of certain pecuniary and non-pecuniary penalties.

IX. Request for Comment

A. Nonbank Capital and Margin

1. Capital

The Commission further requests comment regarding the comparability analysis of EU and German capital requirements with Exchange Act capital requirements for security-based swap dealers without a prudential regulator. Commenters particularly are invited to address the basis for substituted compliance in connection with those requirements, and the proposed conditions and limitations connected to substituted compliance for those requirements. Does EU and German law taken as a whole produce regulatory outcomes that are comparable to those of Exchange Act rule 18a–1? Are there any additional conditions that should be applied to substituted compliance for these capital requirements to promote comparable regulatory outcomes, as a supplement or alternative to those in the proposed Amended Order?

The Commission requests comment on the proposed capital condition that is designed to bridge the gap between the Basel capital standard and the net

liquid assets test imposed by Exchange Act rule 18a–1. Under this condition, a Covered Entity would need to: (1) Maintain liquid assets (as defined in the proposed condition) that have an aggregate market value that exceeds the amount of the Covered Entity’s total liabilities by at least \$100 million before applying the deduction specified in the proposed condition, and by at least \$20 million after applying the deduction specified in the proposed condition; (2) make and preserve for three years a quarterly record that: (a) Identifies and values the liquid assets maintained as defined in the proposed condition, (b) compares the amount of the aggregate value the liquid assets maintained pursuant to the proposed condition to the amount of the Covered Entity’s total liabilities and shows the amount of the difference between the two amounts (“the excess liquid assets amount”), and (c) shows the amount of the deduction specified in the proposed condition and the amount that deduction reduces the excess liquid assets amount; (3) notify the Commission in writing within 24 hours in the manner specified on the Commission’s website if the Covered Entity fails to meet the requirements of the proposed condition and include in the notice the contact information of an individual who can provide further information about the failure to meet the requirements; and (4) include its most recent statement of financial condition filed with its local supervisor (whether audited or unaudited) with its initial written notice to the Commission of its intent to rely on substituted compliance. The Commission requests comment on each prong of this condition. Please identify any regulatory or operational issues in connection with adhering to each prong of this condition. The Commission requests comment on how this proposed condition would compare to the liquidity requirements a Covered Entity is subject to under the Basel capital standard.

For the purposes of this additional capital condition, “liquid assets” would be defined as: (1) Cash and cash equivalents; (2) collateralized agreements; (3) customer and other trading related receivables; (4) trading and financial assets; and (5) initial margin posted by the Covered Entity to a counterparty or third-party, subject to certain conditions. Are these definitions of the categories of liquid assets sufficiently clear? For example, should the definitions provide more detail about the types of assets that could be included within a category? If so, please explain. Should the condition use different definitions? If so, please

¹⁸² See generally Business Conduct Adopting Release, 81 FR 30079.

¹⁸³ Order, 85 FR 84697.

¹⁸⁴ The factors described in this section are in addition to the factors described in the German Substituted Compliance Notice and Proposed Order. See Exchange Act Release No. 90378 (Nov. 9, 2020), 85 FR 72726, 72739–40 (Nov. 13, 2020) (“German Substituted Compliance Notice and Proposed Order”).

¹⁸⁵ Information on the ECB supervision was obtained from the SSM Supervisory Manual, March 2018, available at: <https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.supervisorymanual201803.en.pdf?42da4200dd38971a82c2d15b9ebc0e65>.

explain why and suggest an alternative definition.

For the purposes of this additional capital condition, the deduction (haircut) would be determined by dividing the amount of the Covered Entity's risk-weighted assets by 12.5 (*i.e.*, the reciprocal of 8%). Is this an appropriate method of calculating the deduction? If not, explain why and suggest an alternative method. Would this deduction be comparable to the haircuts under Exchange Act rule 18a-1? If not, explain why. More generally, is the term "risk-weighted assets" understood by market participants? If not, please explain why.

Under this proposed capital condition, the Covered Entity would be required to maintain an excess of liquid assets over total liabilities that equals or exceeds \$100 million before the deduction (derived from the firm's risk-weighted assets) and \$20 million after the deduction. Is "total liabilities" an appropriate metric for this condition? The \$100 million requirement is modeled on the minimum tentative net capital requirement of Exchange Act rule 18a-1 and \$20 million requirement is modeled on the minimum fixed-dollar net capital requirement of the rule. Are these appropriate requirements for the proposed condition? If not, explain why and suggest alternative requirements. For example, should the amount before applying the proposed deduction be \$50, \$75, \$125, or \$150 million or some other amount, or should the amount after the proposed deductions be \$10, \$30, or \$50 million or some other amount? If so, explain why.

The Commission requests comment on the proposed capital condition that would require the Covered Entity to apply substituted compliance with respect to Exchange Act rules 18a-5(a)(9) (a record making requirement), 18a-6(b)(1)(x) (a record preservation requirement), and 18a-8(a)(1)(i), (a)(1)(ii), (b)(1), (b)(2), and (b)(4) (notification requirements). Is this proposed capital condition appropriate? If not, explain why. Would the proposed capital condition provide clarity as to the Covered Entity's obligations under these recordkeeping and notification requirements when applying substituted compliance with respect to Exchange Act rule 18a-3? If not, please explain why.

The Commission requests comment on the potential benefits and costs of the potential capital conditions. Would the conditions promote comparable regulatory outcomes between the capital requirements applied to Covered Entities in Germany and capital

requirements under Exchange Act rule 18a-1? If so, explain why. If not, explain why not. The Commission is mindful that compliance with these capital conditions would require Covered Entities applying substituted compliance to Exchange Act rule 18a-1 to supplement their existing capital calculations and practices, as well as to incur additional time and cost burdens to implement the potential conditions and integrate them into existing business operations. The Commission requests comment and supporting data on these potential time and cost burdens, including quantitative information about the amount of the burdens. The Commission also requests comment on any potential operational or regulatory issues or burdens associated with adhering to the proposed capital conditions.

The Commission requests comment on the potential impacts the capital conditions would have on competition. For example, how would they impact competition between Covered Entities applying substituted compliance with respect to Exchange Act rule 18a-1 and SBS Entities that will comply with Exchange Act rule 18a-1? Would the conditions eliminate or mitigate potential competitive advantages that Covered Entities adhering to the Basel capital standard might have over SBS Entities adhering to the more stringent net liquid assets test standard of Exchange Act rule 18a-1? Alternatively, would the conditions create competitive disadvantages for Covered Entities applying substituted compliance with respect to Exchange Act rule 18a-1 compared to SBS Entities complying with Exchange Act rule 18a-1? Please describe the competitive advantages or disadvantages and explain their impact.

Please identify and describe any potential impacts the proposed capital conditions would have on the way Covered Entities currently conduct their business.

The first proposed capital condition for substituted compliance with Exchange Act rule 18a-1 requires the Covered Entity to be subject to and comply with specific EU and German capital and liquidity requirements. Under Articles 7 and 8 of the CRR, supervisory authorities can grant a Covered Entity a waiver from these EU and German capital and/or liquidity requirements if its parent is subject to them. The Bafin's Amended Application requests substituted compliance for Covered Entities operating pursuant to these waivers. The proposed Amended Order requires the Covered Entity (*i.e.*, the registrant itself) to be subject to the specified EU and German capital and

liquidity requirements. Accordingly, it would not provide substituted compliance for Exchange Act rule 18a-1 to a Covered Entity operating pursuant to these waivers.

However, the Commission requests comment on whether a positive substituted compliance determination (subject to conditions and limitations) could be made with respect to a Covered Entity operating pursuant to a waiver from compliance with the Basel capital and liquidity requirements when its immediate holding company is subject to those requirements. Are there additional conditions that could be imposed on a Covered Entity operating pursuant to these waivers that could produce a comparable regulatory outcome to Exchange Act rule 18a-1? If so, describe the conditions and explain how they would produce a comparable regulatory outcome. For example, should the Commission consider imposing additional conditions on either the Covered Entity and/or its immediate holding company? In this regard, should the Covered Entity *and* its immediate holding company be subject to the proposed four-pronged capital condition that is designed to bridge the gap between the Basel capital standard and the net liquid assets test of Exchange Act rule 18a-1? Further, should substituted compliance be conditioned on the Covered Entity maintaining a pool of liquid and unencumbered assets to meet potential cash outflows over a 30-day (or longer or shorter) stress period? Should the pool of unencumbered liquid assets be sized based on an alternative metric? Should the Commission further condition substituted compliance in this fact pattern on the Covered Entity complying with paragraph (f) under Exchange Act rule 18a-4 (*i.e.*, the exemption from segregation requirements) in order to limit its business activities? Are there other limits that should be placed on the Covered Entity's activities that would mitigate the risk of the firm not being directly subject to EU and German capital and liquidity requirements? If so, please describe them.

The Commission further requests comment on whether any investment firms that may be relying on the Commission's proposed substituted compliance determination with respect to Exchange Act rule 18a-1 would potentially be covered under the new prudential rules for investment firms in the EU and Germany. If so, should the Commission make a positive substituted compliance determination with respect to these capital requirements? If so, explain how they are comparable to the

capital requirements of Exchange Act rule 18a-1.

Commenters also are invited to address any differences between German requirements and the French and UK requirements that formed the basis for the Commission's conditional grants of substituted compliance for capital in the French and UK Orders.¹⁸⁶ Are there reasons to take a different approach with respect to substituted compliance in a final German amended order than was taken in the French and UK Orders with respect to capital? If so, identify the differences and explain why they should result in a different approach.

The Commission further requests comment on whether there would be major security-based swap participants without a prudential regulator in Germany that would seek substituted compliance with respect to Exchange Act rule 18a-2.

2. Margin

The Commission further requests comment regarding the Commission's preliminary view that the EU and German margin requirements are comparable to Exchange Act rule 18a-3, subject to additional conditions to address differences in counterparty exceptions. Commenters particularly are invited to address the basis for substituted compliance in connection with those requirements. Does EU and German law taken as a whole produce regulatory outcomes that are comparable to those of Exchange Act rule 18a-3? Are there any additional conditions that should be applied to substituted compliance for these margin requirements to promote comparable regulatory outcomes, as a supplement or alternative to those in the proposed Amended Order?

The Commission further requests comment on whether the haircuts required under the EMIR Margin RTS are comparable to the collateral haircuts required under paragraph (c)(3) of Exchange Act rule 18a-3. The Commission also requests comment on whether the standardized grid for computing initial margin under the EMIR Margin RTS is comparable to the standardized approach for computing initial margin under paragraph (d)(1) of Exchange Act rule 18a-3.

The Commission requests comment and supporting data on the proposed margin conditions that are designed to address differences in the counterparty exceptions between Exchange Act rule 18a-3 and German and EU margin

requirements. The first proposed additional margin condition would require a Covered Entity to collect variation margin, as defined in the EMIR Margin RTS, from a counterparty with respect to a transaction in a non-cleared security-based swap, unless the counterparty would qualify for an exception under Exchange Act rule 18a-3 from the requirement to deliver variation margin to the Covered Entity. The second proposed additional margin condition would require a Covered Entity to collect initial margin, as defined in the EMIR Margin RTS, from a counterparty with respect to a transaction in a non-cleared security-based swap, unless the counterparty would qualify for an exception under Exchange Act rule 18a-3 from the requirement to deliver initial margin to the Covered Entity. Do these proposed margin conditions accomplish the goal of closing the gap between the counterparty exceptions of Exchange Act rule 18a-3 and the EU and German margin requirements? If so, please explain. If not, please explain why. Would the proposed margin conditions impact any particular type of counterparty more than another? If so, please explain. Does the fact that the EU and German margin requirements have a final phase-in date for implementation of initial margin requirements of September 1, 2022 impact the ability of Covered Entities to implement the proposed margin conditions? If so, please explain.

The Commission also requests comment on the proposed margin condition that a Covered Entity apply substituted compliance to the requirements of Exchange Act rule 18a-5(a)(12) (a record making requirement). Is this proposed margin condition appropriate? If not, explain why. Would the proposed margin condition provide clarity as to the Covered Entity's obligations under this record making requirement when applying substituted compliance with respect to Exchange Act rule 18a-3? If not, please explain why.

The Commission requests comment on the potential benefits and costs of the potential margin conditions. Would the conditions promote comparable regulatory outcomes between the margin requirements applied to Covered Entities in the EU and Germany and the margin requirements of Exchange Act rule 18a-3? If so, explain why. If not, explain why not. The Commission is mindful that compliance with the proposed margin conditions would require Covered Entities applying substituted compliance to Exchange Act rule 18a-3 to supplement their existing

margin processes and documentation, as well as to incur additional time and cost burdens to implement the potential margin conditions and integrate them into existing business operations. The Commission requests comment and supporting data on these potential time and cost burdens, including quantitative information about the amount of the burdens. The Commission also requests comment on any potential operational or regulatory issues or burdens associated with adhering to the proposed margin conditions.

The Commission requests comment on the potential impacts the margin conditions would have on competition. For example, how would they impact competition between Covered Entities applying substituted compliance with respect to Exchange Act rule 18a-3 and SBS Entities that will comply with Exchange Act rule 18a-3? Would the conditions eliminate or mitigate potential competitive advantages that Covered Entities complying with EU and German margin requirements might have over SBS Entities complying with the margin requirements of Exchange Act rule 18a-3? Alternatively, would the proposed margin conditions create competitive disadvantages for Covered Entities applying substituted compliance with respect to Exchange Act rule 18a-3 compared to SBS Entities complying with Exchange Act rule 18a-3? Please describe the competitive advantages or disadvantages and explain their impact.

Please identify and describe any potential impacts on the way Covered Entities currently conduct their business with respect to implementing the proposed margin conditions.

Commenters also are invited to address any differences between German requirements and the French and UK requirements that formed the basis for the Commission's conditional grants of substituted compliance for margin in the French and UK Orders.¹⁸⁷ Are there reasons to take a different approach with respect to substituted compliance in a final German amended order than was taken in the French and UK Orders with respect to margin? If so, identify the differences and explain why they should result in a different approach.

B. Trade Acknowledgment and Verification, and Trading Relationship Documentation

Commenters are invited to address all aspects of the proposed amendments related to trade acknowledgment and

¹⁸⁶ See French Order, 86 FR 41658-59; UK Order, 86 FR 43371-71.

¹⁸⁷ See French Order, 86 FR 41659; UK Order, 86 FR 43372.

verification, and trading relationship documentation. In this regard commenters are invited to address the efficacy of the proposed EMIR-related general conditions. Commenters also are invited to address the proposed removal of MiFID conditions in connection with substituted compliance for the trade acknowledgment and verification requirements and trading relationship documentation requirements.

C. Recordkeeping, Reporting, Notification, and Securities Count Requirements

The Commission requests comment regarding the proposed grant of substituted compliance in connection with requirements under the Exchange Act related to recordkeeping, reporting, notification, and securities counts applicable to SBS Entities without a prudential regulator as well as the requirements of Exchange Act section 15F(g) applicable to all SBS Entities. Commenters particularly are invited to address the basis for substituted compliance in connection with those requirements, and the proposed conditions and limitations connected to substituted compliance for those requirements. Do EU and German requirements taken as a whole produce regulatory outcomes that are comparable to those of Exchange Act section 15F(g) and Exchange Act rules 18a–5, 18a–6, 18a–7, 18a–8, and 18a–9? In this regard, commenters are invited to address the EU and German laws cited for each substituted compliance determination with respect to the distinct requirements within Exchange Act rules 18a–5, 18a–6, 18a–7, and 18a–8 (*i.e.*, the rules for which a more granular approach to substituted compliance is being taken). With respect to each substituted compliance determination, the Commission seeks comment on the following matters: (1) Will the EU and German laws cited for the determination result in a comparable regulatory outcome; (2) are there additional or alternative EU and German laws that should be cited to achieve a comparable regulatory outcome; and (3) are any of the EU and German laws cited for the determination unnecessary to achieve a comparable regulatory outcome?

Commenters particularly are invited to address the proposed condition with respect to Exchange Act rule 18a–5 that a Covered Entity without a prudential regulator preserve all of the data elements necessary to create the records required by Exchange Act rules 18a–5(a)(1), (2), (3), (4), and (7). Do the relevant EU and German laws require Covered Entities without a prudential regulator to retain the data elements

necessary to create the records required by these rules? If not, please identify which data elements are not preserved pursuant to the relevant EU and German laws. Further, how burdensome would it be for a Covered Entity without a prudential regulator to format the data elements into the records required by these rules (*e.g.*, a blotter, ledger, or securities record, as applicable) if the firm was requested to do so? In what formats do Covered Entities without a prudential regulator in the Germany produce this information to EU and German authorities? How do those formats differ from the formats required by Exchange Act rules 18a–5(a)(1), (2), (3), (4), and (7)?

Is it appropriate to structure the Commission's substituted compliance determinations in the proposed Amended Order with respect to the recordkeeping, reporting and notification rules to provide Covered Entities with greater flexibility to select which distinct requirements within the broader recordkeeping, reporting, and notification rules for which they want to apply substituted compliance? Explain why or why not. For example, would it be more efficient for a Covered Entity to comply with certain Exchange Act requirements within a given recordkeeping or reporting rule (rather than apply substituted compliance) because it can utilize systems that its affiliated broker-dealer has implemented to comply with them? If so, explain why. If not, explain why not. Is it appropriate to permit Covered Entities to take a more granular approach to the requirements within these recordkeeping rules? For example, would this approach make it more difficult for the Commission to get a comprehensive understanding of the Covered Entity's security-based swap activities and financial condition? Explain why or why not. Would it be overly complex for the Covered Entity to administer a firm-wide recordkeeping system under this approach? Explain why or why not.

Certain of the Commission's recordkeeping, reporting, and notification requirements are fully or partially linked to substantive Exchange Act requirements for which a preliminary positive substituted compliance determination would not be made under the proposed Amended Order. In these cases, should the Commission not make a positive substituted compliance determination for the fully linked requirement in the recordkeeping, reporting, and notification rules or to the portion of the requirement that is linked to a

substantive Exchange Act requirement? Explain why or why not.

Certain of the requirements in the Commission's recordkeeping, reporting, and notification rules are linked to substantive Exchange Act requirements where a preliminary positive substituted compliance determination would be made under the proposed Amended Order. In these cases, should a positive substituted compliance determination for the linked requirement in the recordkeeping, reporting, or notification rule be conditioned on the Covered Entity applying substituted compliance to the linked substantive Exchange Act requirement? If not, explain why. Should this be the case regardless of whether the requirement is fully or partially linked to the substantive Exchange Act requirement? If not, explain why.

While certain recordkeeping and reporting requirements are not expressly linked to Exchange Act rule 18a–1, they would be important to the Commission's ability to monitor or examine for compliance with the capital requirements under this rule. The records also would assist the firm in monitoring its net capital position and, therefore, in complying with Exchange Act rule 18a–1 and its appendices. Should a positive substituted compliance determination with respect to these recordkeeping and reporting requirements be subject to the condition that the Covered Entity applies substituted compliance with respect to Exchange Act rule 18a–1 and its appendices? If not, explain why.

Commenters also are invited to address the proposal that a positive substituted compliance determination with respect to Exchange Act rule 18a–7 would be conditioned on the Covered Entity without a prudential regulator filing financial and operational information with the Commission in the manner and format specified by the Commission by order or rule. In addition to requesting comment about how Covered Entities without a prudential regulator should meet the Manner and Format Condition, the Commission continues to seek comment on the how Covered Entities with a prudential regulator should meet this condition. With respect to the FOCUS Report Part II, not all of the line items on the report may be as pertinent to a Covered Entity without a prudential regulator if a positive substituted compliance determination is made with respect to capital or margin. With respect to the FOCUS Report Part IIC, because the Commission does not have responsibility to administer capital and margin requirements for prudentially

regulated Covered Entities, the FOCUS Report Part IIC elicits much less information than the FOCUS Report Part II or the financial reports Covered Entities file with EU and/or German authorities. Should the Commission require Covered Entities to file the financial and operational information using the FOCUS Report Part II (if not prudentially regulated) or Part IIC (if prudentially regulated)? Are there line items on the FOCUS Report Part II or Part IIC that elicit information that is not included in the reports Covered Entities file with EU and/or German authorities? If so, do Covered Entities record that information in their required books and records? Please identify any information that is elicited in the FOCUS Report Part II (if not prudentially regulated) or Part IIC (if prudentially regulated) that is not: (1) Included in the financial reports filed by Covered Entities with EU and/or German authorities; or (2) recorded in the books and records required of Covered Entities. With respect to the FOCUS Report Part IIC, would the answer to these questions change if references to FFIEC Form 031 were not included in the FOCUS Report Part IIC? If so, how?

As a preliminary matter, as a condition of substituted compliance should Covered Entities file a limited amount of financial and operational information on the FOCUS Report Part II (if not prudentially regulated) or Part IIC (if prudentially regulated) for a period of two years to further evaluate the burden of requiring all applicable line items to be filled out? If so, which line items should be required? To the extent that Covered Entities otherwise report or record information that is responsive to the FOCUS Report Part II or Part IIC, how could the information on these reports be integrated into a database of filings the Commission or its designee will maintain for filers of the FOCUS Report Parts II and IIC (e.g., the eFOCUS system) to achieve the objective of being able to perform cross-form analysis of information entered into the uniquely numbered line items on the forms?

Commenters also are invited to address the proposed conditions to applying substituted compliance for the requirement of Exchange Act rule 18a-7 that Covered Entities without a prudential regulator file annual audited reports. For example, comment is sought on the first and third conditions that the Covered Entity simultaneously transmit to the Commission a copy of the financial statements the Covered Entity is required to file annually with EU and/or German authorities, and, if

not already required, that the Covered Entity engage an independent public accountant to prepare a report covering the annual financial statements. Are there any concerns with the Commission accepting financial statements that are prepared in accordance with EU or German GAAP and audited by an independent public accountant in accordance with EU or German GAAS? In addition, are there any concerns with the public accountant being independent in accordance with EU or German requirements? Further, the third proposed condition would require Covered Entities that are not required under German law to file a report of an independent public accountant covering their financial statements to file such an accountant's report. This proposed condition is based on the fact that German law only requires certain investment firms (depending on their size) to have their financial statements audited. Do the firms in Germany that are not subject to the requirement to file audited financial reports engage in security-based swap activities? If so, are they likely to register with the Commission as a non-prudentially regulated security-based swap dealer or major security-based swap participant?

Commenters also are invited to address any differences between German requirements and the French and UK requirements that formed the basis for the Commission's conditional grants of substituted compliance for recordkeeping, reporting, notification, and securities count requirements in the French and UK Orders.¹⁸⁸ Are there reasons to take a different approach with respect to substituted compliance in a final German amended order than was taken in the French and UK Orders with respect to these requirements? If so, identify the differences and explain why they should result in a different approach.

D. Additional Aspects of the Proposal

Commenters further are invited to address the proposed amendments to the Order related to written notice of a Covered Entity's intent to rely on substituted compliance, regarding the incorporation of references to MiFIR into the general condition related to EU cross-border issues, and the additional MOU condition. Commenters are also invited to address the changes to the requirements for CCO reports, and the provisions added and deleted from the sections on risk control, internal

supervision and counterparty protection requirements.

In addition, commenters are invited to address how the Commission should weigh considerations related to supervisory and enforcement effectiveness related to capital and margin, including considerations regarding relevant EU and German supervisory and enforcement authority, practices and tools related to capital and margin.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority,¹⁸⁹

J. Matthew DeLesDernier,
Assistant Secretary.

Attachment A

It Is Hereby Determined and Ordered, pursuant to rule 3a71-6 under the Exchange Act, that a Covered Entity (as defined in paragraph (g)(1) of this Order) may satisfy the requirements under the Exchange Act that are addressed in paragraphs (b) through (f) of this Order so long as the Covered Entity is subject to and complies with relevant requirements of the Federal Republic of Germany and the European Union and with the conditions of this Order, as amended or superseded from time to time.

(a) General Conditions

This Order is subject to the following general conditions, in addition to the conditions specified in paragraphs (b) through (f):

(1) *Activities as MiFID “investment services or activities.”* For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of MiFID, provisions of WpHG that implement MiFID, and/or other EU and German requirements adopted pursuant to those provisions, the Covered Entity's relevant security-based swap activities constitute “investment services” or “investment activities,” as defined in MiFID article 4(1)(2) and in WpHG section 2(8), and fall within the scope of the Covered Entity's authorization from BaFin to provide investment services and/or perform investment activities in the Federal Republic of Germany.

(2) *Counterparties as MiFID “clients.”* For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of MiFID, provisions of WpHG that implement MiFID and/or other EU and German requirements adopted pursuant to those provisions, the relevant counterparty (or potential counterparty) to the Covered Entity is a “client” (or potential “client”), as defined in MiFID article 4(1)(9) and in WpHG section 67(1).

(3) *Security-based swaps as MiFID “financial instruments.”* For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions

¹⁸⁸ See French Order, 86 FR 41648-57; UK Order, 86 FR 43359-69.

¹⁸⁹ 17 CFR 200.30-3(a)(89).

of MiFID, provisions of WpHG that implement MiFID and/or other EU and German requirements adopted pursuant to those provisions, the relevant security-based swap is a “financial instrument,” as defined in MiFID article 4(1)(15) and in WpHG section 2(4).

(4) *Covered Entity as CRD/CRR “institution.”* For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity’s compliance with, the provisions of CRD, provisions of KWG that implement CRD, CRR and/or other EU and German requirements adopted pursuant to those provisions, the Covered Entity is an “institution,” as defined in CRD article 3(1)(3), in CRR article 4(1)(3) and in KWG section 1(1b).

(5) *Counterparties as EMIR “counterparties.”* For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity’s compliance with, provisions of EMIR, EMIR RTS, EMIR Margin RTS and/or other EU requirements adopted pursuant to those provisions, if the relevant provision applies only to the Covered Entity’s activities with specified types of counterparties, and if the counterparty to the Covered Entity is not any of the specified types of counterparty, the Covered Entity complies with the applicable condition of this Order:

(i) As if the counterparty were the specified type of counterparty; in this regard, if the Covered Entity reasonably determines that the counterparty would be a financial counterparty if it were established in the EU and authorized by an appropriate EU authority, it must treat the counterparty as if the counterparty were a financial counterparty; and

(ii) Without regard to the application of EMIR article 13.

(6) *Security-based swap status under EMIR.* For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity’s compliance with, provisions of EMIR and/or other EU requirements adopted pursuant to those provisions, either:

(i) The relevant security-based swap is an “OTC derivative” or “OTC derivative contract,” as defined in EMIR article 2(7), that has not been cleared by a central counterparty and otherwise is subject to the provisions of EMIR article 11, EMIR RTS articles 11–15, and EMIR Margin RTS article 2; or

(ii) The relevant security-based swap has been cleared by a central counterparty that is authorized or recognized to clear derivatives contracts by a relevant authority in the EU.

(7) *Memorandum of Understanding with BaFin.* The Commission and BaFin have a supervisory and enforcement memorandum of understanding and/or other arrangement addressing cooperation with respect to this Order at the time the Covered Entity complies with the relevant requirements under the Exchange Act via compliance with one or more provisions of this Order.

(8) *Memorandum of Understanding Regarding ECB-Owned Information.* The Commission and the ECB have a supervisory and enforcement memorandum of

understanding and/or other arrangement addressing cooperation with respect to this Order as it pertains to information owned by the ECB at the time the Covered Entity complies with the relevant requirements under the Exchange Act via compliance with one or more provisions of this Order.

(9) *Notice to Commission.* A Covered Entity relying on this Order must provide notice of its intent to rely on this Order by notifying the Commission in writing. Such notice must be sent to the Commission in the manner specified on the Commission’s website. The notice must include the contact information of an individual who can provide further information about the matter that is the subject of the notice. The notice must also identify each specific substituted compliance determination within paragraphs (b) through (f) of the Order for which the Covered Entity intends to apply substituted compliance. A Covered Entity must promptly provide an amended notice if it modifies its reliance on the substituted compliance determinations in this Order.

(10) *European Union Cross-Border Matters.*

(i) If, in relation to a particular service provided by a Covered Entity, responsibility for ensuring compliance with any provision of MiFID or MiFIR or any other EU or German requirement adopted pursuant to MiFID or MiFIR listed in paragraphs (b) through (f) of this Order is allocated to an authority of the Member State of the European Union in whose territory a Covered Entity provides the service, BaFin must be the authority responsible for supervision and enforcement of that provision or requirement in relation to the particular service.

(ii) If responsibility for ensuring compliance with any provision of MAR or any other EU requirement adopted pursuant to MAR listed in paragraphs (b) through (f) of this Order is allocated to one or more authorities of a Member State of the European Union, one of such authorities must be BaFin.

(11) *Notification Requirements Related to Changes in Capital.* A Covered Entity that is prudentially regulated relying on this Order must apply substituted compliance with respect to the requirements of Exchange Act rule 18a–8(c) and the requirements of Exchange Act rule 18a–8(h) as applied to Exchange Act rule 18a–8(c).

(b) *Substituted Compliance in Connection With Risk Control Requirements*

This Order extends to the following provisions related to risk control:

(1) *Internal risk management.* The requirements of Exchange Act section 15F(j)(2) and related aspects of Exchange Act rule 15Fh–3(h)(2)(iii)(I), provided that the Covered Entity is subject to and complies with the requirements of: MiFID articles 16 and 23; WpHG sections 63, 80, 83 and 84; MiFID Org Reg articles 21–37, 72–76 and Annex IV; CRD articles 74, 76 and 79–87, 88(1), 91(1)–(2), 91(7)–(9) and 92, 94 and 95; and KWG sections 25a, 25b, 25c (other than 25c(2)), 25d (other than 25d(3) and 25d(11)), 25e and 25f; CRR articles 286–88 and 293; and EMIR Margin RTS article 2.

(2) *Trade acknowledgement and verification.* The requirements of Exchange

Act rule 15Fi–2, provided that the Covered Entity is subject to and complies with the requirements of EMIR article 11(1)(a) and EMIR RTS article 12.

(3) *Portfolio reconciliation and dispute reporting.* The requirements of Exchange Act rule 15Fi–3, provided that:

(i) The Covered Entity is subject to and complies with the requirements of EMIR article 11(1)(b) and EMIR RTS articles 13 and 15; and

(ii) The Covered Entity provides the Commission with reports regarding disputes between counterparties on the same basis as it provides those reports to competent authorities pursuant to EMIR RTS article 15(2).

(4) *Portfolio compression.* The requirements of Exchange Act rule 15Fi–4, provided that the Covered Entity is subject to and complies with the requirements of EMIR RTS article 14.

(5) *Trading relationship documentation.* The requirements of Exchange Act rule 15Fi–5, other than paragraph (b)(5) to that rule when the counterparty is a U.S. person, provided that the Covered Entity is subject to and complies with the requirements of EMIR article 11(1)(a), EMIR RTS article 12, and EMIR Margin RTS article 2.

(c) *Substituted Compliance in Connection With Capital and Margin*

(1) *Capital.* The requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1, and 18a–1a through d, provided that:

(i) The Covered Entity is subject to and complies with: CRR, Part One (General Provisions) Article 6(1), Part Two (Own Funds), Part Three (Capital Requirements), Part Four (Large Exposures), Part Five (Exposures to Transferred Credit Risk), Part Six (Liquidity), and Part Seven (Leverage); MiFID Org Reg article 23; BRRD, articles 45(6) and 81(1); CRD, articles 73, 79, 86, 129, 129(1), 130, 130(1), 130(5), 131, 133, 133(1), 133(4), 141, 142(1) and (2); EMIR Margin RTS, articles 2, 3(b), 7, and 19(1)(d) and (e), (3) and (8); KWG, sections 10b–10h, 10i(2)–(9), 25a(1) sentence 3 no. 2 and no. 3 b), 33(1) sentence 1c); SAG, section 49(2), 49d, 62(1), 138(1); and SolvV, section 37;

(ii) The Covered Entity applies substituted compliance for the requirements of Exchange Act rules 18a–5(a)(9), 18a–6(b)(1)(x), and 18a–8(a)(1)(i), (a)(1)(ii), (b)(1), (b)(2), and (b)(4) pursuant to this Order; and

(iii)(A) The Covered Entity:

(1) Maintains liquid assets as defined in paragraph (c)(1)(iii)(B) that have an aggregate market value that exceeds the amount of the Covered Entity’s total liabilities by at least \$100 million before applying the deduction specified in paragraph (c)(1)(iii)(C) and by at least \$20 million after applying the deduction specified in paragraph (c)(1)(iii)(C);

(2) Makes and preserves for three years a quarterly record that:

(a) Identifies and values the liquid assets maintained pursuant to paragraph (c)(1)(iii)(A)(1);

(b) Compares the amount of the aggregate value the liquid assets maintained pursuant to paragraph (c)(1)(iii)(A)(1) to the amount of the Covered Entity’s total liabilities and

shows the amount of the difference between the two amounts (“the excess liquid assets amount”); and

(c) Shows the amount of the deduction specified in paragraph (c)(1)(iii)(C) and the amount that deduction reduces the excess liquid assets amount;

(3) The Covered Entity notifies the Commission in writing within 24 hours in the manner specified on the Commission’s website if the Covered Entity fails to meet the requirements of paragraph (c)(iii)(A)(1) and includes in the notice the contact information of an individual who can provide further information about the failure to meet the requirements; and

(4) Includes its most recent statement of financial condition filed with its local supervisor (whether audited or unaudited) with its initial written notice to the Commission of its intent to rely on substituted compliance under condition (a)(9) above.

(B) For the purposes of paragraph (c)(1)(iii)(A)(1), liquid assets are:

(1) Cash and cash equivalents;

(2) Collateralized agreements;

(3) Customer and other trading related receivables;

(4) Trading and financial assets; and

(5) Initial margin posted by the Covered Entity to a counterparty or a third-party custodian, provided:

(a) The initial margin requirement is funded by a fully executed written loan agreement with an affiliate of the Covered Entity;

(b) The loan agreement provides that the lender waives re-payment of the loan until the initial margin is returned to the Covered Entity; and

(c) The liability of the Covered Entity to the lender can be fully satisfied by delivering the collateral serving as initial margin to the lender.

(C) The deduction required by paragraph (c)(1)(iii)(A) is the amount of the Covered Entity’s risk-weighted assets calculated for the purposes of the capital requirements identified in paragraph (c)(1)(i) divided by 12.5.

(2) *Margin.* The requirements of Exchange Act section 15F(e) and Exchange Act rule 18a–3, provided that:

(i) The Covered Entity is subject to and complies with the requirements of: EMIR article 11; EMIR Margin RTS; CRR articles 103, 105(3); 105(10); 111(2), 224, 285, 286, 286(7), 290, 295, 296(2)(b), 297(1), 297(3), and 298(1); MiFID Org Reg article 23(1); CRD articles 74 and 79(b); and KWG section 25a(1);

(ii) The Covered Entity collects variation margin, as defined in EMIR Margin RTS, from a counterparty with respect to transactions in non-cleared security-based swaps, unless the counterparty would qualify for an exception from the collateral collection requirements under paragraph (c)(1)(iii) or (c)(2)(iii) of Exchange Act 18a–3;

(iii) The Covered Entity collects initial margin, as defined in the EMIR Margin RTS, from a counterparty with respect to transactions in non-cleared security-based swaps, unless the counterparty would qualify for an exception from the collateral collection

requirements under paragraph (c)(1)(iii) of Exchange Act rule 18a–3; and

(iv) The Covered Entity applies substituted compliance for the requirements of Exchange Act rule 18a–5(a)(12) pursuant to this Order.

(d) Substituted Compliance in Connection With Internal Supervision and Compliance Requirements and Certain Exchange Act Section 15F(j) Requirements

This Order extends to the following provisions related to internal supervision and compliance and Exchange Act section 15F(j) requirements:

(1) *Internal supervision.* The requirements of Exchange Act rule 15Fh–3(h) and Exchange Act sections 15F(j)(4)(A) and (j)(5), provided that:

(i) The Covered Entity is subject to and complies with the requirements identified in paragraph (d)(3) of this Order;

(ii) The Covered Entity complies with paragraph (d)(4) of this Order; and

(iii) This paragraph (d) does not extend to the requirements of paragraph (h)(2)(iii)(I) to rule 15Fh–3 to the extent those requirements pertain to compliance with Exchange Act sections 15F(j)(2), (j)(3), (j)(4)(B) and (j)(6), or to the general and supporting provisions of paragraph (h) to rule 15Fh–3 in connection with those Exchange Act sections.

(2) *Chief compliance officers.* The requirements of Exchange Act section 15F(k) and Exchange Act rule 15Fk–1, provided that:

(i) The Covered Entity is subject to and complies with the requirements identified in paragraph (d)(3) of this Order;

(ii) All reports required pursuant to MiFID Org Reg article 22(2)(c) must also:

(A) Be provided to the Commission at least annually, and in the English language;

(B) Include a certification signed by the chief compliance officer or senior officer (as defined in Exchange Act rule 15Fk–1(e)(2)) of the Covered Entity that, to the best of the certifier’s knowledge and reasonable belief and under penalty of law, the report is accurate and complete in all material respects;

(C) Address the Covered Entity’s compliance with:

(i) Applicable requirements under the Exchange Act; and

(ii) The other applicable conditions of this Order in connection with requirements for which the Covered Entity is relying on this Order;

(D) Be provided to the Commission no later than 15 days following the earlier of:

(i) The submission of the report to the Covered Entity’s management body; or

(ii) The time the report is required to be submitted to the management body; and

(E) Together cover the entire period that the Covered Entity’s annual compliance report referenced in Exchange Act section 15F(k)(3) and Exchange Act rule 15Fk–1(c) would be required to cover.

(3) *Applicable supervisory and compliance requirements.* Paragraphs (d)(1) and (d)(2) are conditioned on the Covered Entity being subject to and complying with the following requirements: MiFID articles 16 and 23; WpHG sections 63, 80, 83 and 84; MiFID Org Reg articles 21–37, 72–76 and Annex IV; CRD

articles 74, 76, 79–87, 88(1), 91(1)–(2), 91(7)–(9) and 92, 94 and 95; and KWG sections 25a, 25b, 25c (other than 25c(2)), 25d (other than 25d(3) and 25d(11)), 25e and 25f, and CRR articles 286–88 and 293; and EMIR Margin RTS article 2.

(4) *Additional condition to paragraph (d)(1).* Paragraph (d)(1) further is conditioned on the requirement that the Covered Entity complies with the provisions specified in paragraph (d)(3) as if those provisions also require compliance with:

(i) Applicable requirements under the Exchange Act; and

(ii) The other applicable conditions of this Order in connection with requirements for which the Covered Entity is relying on this Order.

(e) Substituted Compliance in Connection With Counterparty Protection Requirements

This Order extends to the following provisions related to counterparty protection:

(1) *Disclosure of information regarding material risks and characteristics.* The requirements of Exchange Act rule 15Fh–3(b) relating to disclosure of material risks and characteristics of one or more security-based swaps subject thereto, provided that the Covered Entity, in relation to that security-based swap, is subject to and complies with the requirements of MiFID article 24(4), WpHG sections 63(7) and 64(1) and MiFID Org Reg articles 48–50.

(2) *Disclosure of information regarding material incentives or conflicts of interest.* The requirements of Exchange Act rule 15Fh–3(b) relating to disclosure of material incentives or conflicts of interest that a Covered Entity may have in connection with one or more security-based swaps subject thereto, provided that the Covered Entity, in relation to that security-based swap, is subject to and complies with the requirements of either:

(i) MiFID article 23(2)–(3); WpHG section 63(2); and MiFID Org Reg articles 33–35;

(ii) MiFID article 24(9); WpHG section 70; and MiFID Delegated Directive article 11(5); or

(iii) MAR article 20(1) and MAR Investment Recommendations Regulation articles 5 and 6.

(3) *“Know your counterparty.”* The requirements of Exchange Act rule 15Fh–3(e), as applied to one or more security-based swap counterparties subject thereto, provided that the Covered Entity, in relation to the relevant security-based swap counterparty, is subject to and complies with the requirements of MiFID article 16(2); WpHG section 80(1); MiFID Org Reg articles 21–22, 25–26 and applicable parts of Annex I; CRD articles 74(1) and 85(1); KWG section 25a; MLD articles 11 and 13; GwG sections 10–11; MLD articles 8(3) and 8(4)(a) as applied to internal policies, controls and procedures regarding recordkeeping of customer due diligence activities; and GwG section 6(1)–(2) as applied to vigilance measures regarding recordkeeping of customer due diligence activities.

(4) *Suitability.* The requirements of Exchange Act rule 15Fh–3(f), as applied to one or more recommendations of a security-based swap or trading strategy involving a

security-based swap subject thereto, provided that:

(i) The Covered Entity, in relation to the relevant recommendation, is subject to and complies with the requirements of MiFID articles 24(2)–(3) and 25(1)–(2); WpHG sections 63(5)–(6), 80(9)–(13) and 87(1)–(2); and MiFID Org Reg articles 21(1)(b) and (d), 54 and 55; and

(ii) The counterparty to which the Covered Entity makes the recommendation is a “professional client” mentioned in MiFID Annex II section I and WpHG section 67(2) and is not a “special entity” as defined in Exchange Act section 15F(h)(2)(C) and Exchange Act rule 15Fh–2(d).

(5) *Fair and balanced communications.* The requirements of Exchange Act rule 15Fh–3(g), as applied to one or more communications subject thereto, provided that the Covered Entity, in relation to the relevant communication, is subject to and complies with the requirements of:

(i) Either MiFID articles 24(1), (3) and WpHG sections 63(1), (6) or MiFID article 30(1) and WpHG section 68(1); and

(ii) MiFID articles 24(4)–(5); WpHG sections 63(7) and 64(1); MiFID Org Reg articles 46–48; MAR articles 12(1)(c), 15 and 20(1); and MAR Investment Recommendations Regulation articles 3 and 4.

(6) *Daily mark disclosure.* The requirements of Exchange Act rule 15Fh–3(c), as applied to one or more security-based swaps subject thereto, provided that the Covered Entity is required to reconcile, and does reconcile, the portfolio containing the relevant security-based swap on each business day pursuant to EMIR articles 11(1)(b) and 11(2) and EMIR RTS article 13.

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements

This Order extends to the following provisions that apply to a Covered Entity related to recordkeeping, reporting, notification and securities counts:

(1)(i) *Make and keep current certain records.* The requirements of the following provisions of Exchange Act rule 18a–5, provided that the Covered Entity complies with the relevant conditions in this paragraph (f)(1)(i) and with the applicable conditions in paragraph (f)(1)(ii):

(A) The requirements of Exchange Act rule 18a–5(a)(1) or (b)(1), as applicable, provided that:

(1) The Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 74, 75, and Annex IV; and MiFIR article 25(1); and

(2) With respect to the requirements of Exchange Act rule 18a–5(a)(1), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order.

(B) The requirements of Exchange Act rule 18a–5(a)(2), provided that:

(1) The Covered Entity is subject to and complies with the requirements of CRD article 73; MiFID Delegated Directive article 2; MiFID Org Reg articles 72, 74 and 75; EMIR article 39(4); KWG section 10a; and WpHG section 84; and

(2) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;

(C) The requirements of Exchange Act rule 18a–5(a)(3) or (b)(2), as applicable, provided that:

(1) The Covered Entity is subject to and complies with the requirements of MiFID Delegated Directive article 2; MiFID Org Reg articles 72, 74 and 75; EMIR article 39(4); and WpHG section 84; and

(2) With respect to the requirements of Exchange Act rule 18a–5(a)(3), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;

(D) The requirements of Exchange Act rule 18a–5(a)(4) or (b)(3), as applicable, provided that:

(1) The Covered Entity is subject to and complies with the requirements of CRR article 103; MiFID articles 16(6), 25(5), and 25(6); MiFID Org Reg articles 59, 74, 75 and Annex IV; MiFIR article 25(1); EMIR articles 9(2) and 11(1)(a); WpHG sections 63 and 64; and

(2) With respect to the requirements of Exchange Act rule 18a–5(a)(4), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;

(E) The requirements of Exchange Act rule 18a–5(b)(4) provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg article 59; EMIR articles 9(2) and 11(1)(a); MiFID articles 16(6), 25(5), and 25(6); and WpHG sections 63, 64, and 83 paragraphs 1 and 2;

(F) The requirements of Exchange Act rule 18a–5(a)(5) or (b)(5), as applicable, provided that:

(1) The Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 74, 75 and Annex IV; and MiFIR article 25(1); and

(2) With respect to the requirements of Exchange Act rule 18a–5(a)(5), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;

(G) The requirements of Exchange Act rules 18a–5(a)(6) and (a)(15) or (b)(6) and (b)(11), as applicable, provided that:

(1) The Covered Entity is subject to and complies with the requirements of CRR articles 103, 105(3), and 105(10); CRD article 73; MiFID articles 16(6), 25(5), 25(6); MiFID Delegated Directive article 2; MiFID Org Reg articles 59, 74, 75, and Annex IV; MiFIR article 25(1); EMIR articles 9(2), 11(1)(a), and 39(4); KWG section 10a; and WpHG sections 63, 64, 83 paragraphs 1 through 2, and 84; and

(2) The Covered Entity applies substituted compliance for the requirements of Exchange Act rule 15Fi–2 pursuant to this Order;

(H) The requirements of Exchange Act rule 18a–5(a)(7) or (b)(7), as applicable, provided that:

(1) The Covered Entity is subject to and complies with the requirements of MiFIR article 25(1); MLD4 articles 11 and 13; MiFID

article 25(2); WpHG section 64 paragraph 3; and GWG sections 10 and 11; and

(2) With respect to the requirements of Exchange Act rule 18a–5(a)(7), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;

(I) The requirements of Exchange Act rule 18a–5(a)(8), provided that:

(1) The Covered Entity is subject to and complies with the requirements of CRR articles 103, 105(3), and 105(10); MiFID Org Reg articles 59, 74, 75 and Annex IV; MiFIR article 25(1); EMIR articles 9(2), 11(1)(a), and 39(4); MiFID articles 16(6), 25(5), and 25(6); CRD article 73; MiFID Delegated Directive article 2; WpHG sections 63, 64, 83 paragraphs 1 through 2, and 84; and KWG section 10a; and

(2) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order.;

(J) The requirements of Exchange Act rule 18a–5(a)(9), provided that:

(1) The Covered Entity is subject to and complies with the requirements of CRD article 73; MiFID Delegated Directive article 2; EMIR article 39(4); MiFID Org Reg articles 72, 74, and 75; KWG section 10a; and WpHG Section 84;

(2) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order; and

(3) This Order does not extend to the requirements of Exchange Act rule 18a–5(a)(9) relating to Exchange Act rule 18a–2;

(K) The requirements of Exchange Act rule 18a–5(a)(10) and (b)(8), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 21(1)(d), 35; CRD articles 88, 91(1), 91(8); MiFID article 9(1) and 16(3); KWG sections 15, 25a(1), 25c(1) through (3), 25c(4a), 25d(1) through (3), 25d(7), 25d(11), and 36; and WpHG sections 81(1) and 84;

(L) The requirements of Exchange Act rule 18a–5(a)(12), provided that:

(1) The Covered Entity is subject to and complies with the requirements of CRR articles 103, 105(3) and 105(10); MiFID Org Reg. articles 72, 74 and 75; CRD article 73; MiFID Delegated Directive article 2; KWG section 10a; and WpHG section 84; and

(2) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rule 18a–3 pursuant to this Order;

(M) The requirements of Exchange Act rule 18a–5(a)(17) and (b)(13), as applicable, regarding one or more provisions of Exchange Act rules 15Fh–3 or 15Fk–1 for which substituted compliance is available under this Order, provided that:

(1) The Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 72, 73, and Annex I; MiFID articles 16(6) and 25(2); MLD articles 11 and 13; EMIR article 39(5); WpHG sections 64 paragraph 3 and 83 paragraph 1; and GWG sections 10 and 11, in each case with respect to the relevant security-based swap or activity;

(2) With respect to the portion of Exchange Act rule 18a-5(a)(17) and (b)(13) that relates to Exchange Act rule 15Fh-3, the Covered Entity applies substituted compliance for such business conduct standard(s) of Exchange Act rule 15Fh-3 pursuant to this Order, as applicable, with respect to the relevant security-based swap or activity; and

(3) With respect to the portion of Exchange Act rule 18a-5(a)(17) and (b)(13) that relates to Exchange Act rule 15Fk-1, the Covered Entity applies substituted compliance for Exchange Act section 15F(k) and Exchange Act rule 15Fk-1 pursuant to this Order;

(N) The requirements of Exchange Act rule 18a-5(a)(18)(i) and (ii) or (b)(14)(i) and (ii), as applicable, provided that:

(1) The Covered Entity is subject to and complies with the requirements of EMIR article 11(1)(b); and EMIR RTS article 15(1)(a); and

(2) The Covered Entity applies substituted compliance for Exchange Act rule 15Fi-3 pursuant to this Order; and

(O) The requirements of Exchange Act rule 18a-5(a)(18)(iii) or (b)(14)(iii), as applicable, provided that:

(1) The Covered Entity is subject to and complies with the requirements of EMIR article 11(1)(b); and EMIR RTS article 15(1)(a), in each case with respect to such security-based swap portfolio(s); and

(2) The Covered Entity applies substituted compliance for Exchange Act rule 15Fi-4 pursuant to this Order.

(ii) Paragraph (f)(1)(i) is subject to the following further conditions:

(A) Paragraphs (f)(1)(i)(A) through (D) and (H) are subject to the condition that the Covered Entity preserves all of the data elements necessary to create the records required by the applicable Exchange Act rules cited in such paragraphs and upon request furnishes promptly to representatives of the Commission the records required by those rules;

(B) A Covered Entity may apply the substituted compliance determination in paragraph (f)(1)(i)(M) to records of compliance with Exchange Act rule 15Fh-3(b), (c), (e), (f) and (g) in respect of one or more security-based swaps or activities related to security-based swaps; and

(C) This Order does not extend to the requirements of Exchange Act rule 18a-5(a)(13), (a)(14), (a)(16), (b)(9), (b)(10) or (b)(12).

(2)(i) *Preserve certain records.* The requirements of the following provisions of Exchange Act rule 18a-6, provided that the Covered Entity complies with the relevant conditions in this paragraph (f)(2)(i) and with the applicable conditions in paragraph (f)(2)(ii):

(A) The requirements of Exchange Act rule 18a-6(a)(1) or (a)(2), as applicable, provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 72, 74, 75, and Annex IV; CRR article 103; MiFIR article 25(1); EMIR article 9(2); MiFID articles 16(6) and 69(2); CRD article 73; MiFID Delegated Directive article 2; WpHG sections 6, 7, 83 paragraph 1, and 84; and KWG section 10a;

(B) The requirements of Exchange Act rule 18a-6(b)(1)(i) or (b)(2)(i), as applicable,

provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 72, 74, 75, and Annex IV; CRR article 103; MiFIR article 25(1); EMIR article 9(2); MiFID articles 16(6) and 69(2); CRD article 73; MiFID Delegated Directive article 2; WpHG sections 6, 7, 83 paragraph 1, and 84; and KWG section 10a;

(C) The requirements of Exchange Act rule 18a-6(b)(1)(ii) and (iii), provided that:

(1) The Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 72, 74 and 75; EMIR article 9(2); CRD article 73; MiFID Delegated Directive article 2; MiFID 16(6); KWG section 10a; and WpHG sections 83 paragraph 1, and 84; and

(2) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d pursuant to this Order;

(D) The requirements of Exchange Act rule 18a-6(b)(1)(iv) or (b)(2)(ii), as applicable, provided that the Covered Entity is subject to and complies with the requirements of CRR article 103; MiFID Org Reg articles 72, 73, 74, 75, 76, Annex I and Annex IV; MiFIR article 25(1); EMIR article 9(2); CRD article 73; MiFID articles 16(6), 16(7); MiFID Delegated Directive article 2; KWG section 10a; and WpHG sections 83 paragraphs 1 and 3 through 8, and 84;

(E) The requirements of Exchange Act rule 18a-6(b)(1)(v), provided that:

(1) The Covered Entity is subject to and complies with the requirements of EMIR article 9(2); CRR articles 99, 294, 394, 415, 430 and Part Six: Title II and Title III; CRR Reporting ITS article 14 and annexes I-V and VIII-XIII; and MiFID Org Reg article 72(1);

(2) With respect to the requirements of Exchange Act rule 18a-6(b)(1)(v), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d pursuant this Order; and

(3) This Order does not extend to the requirements of Exchange Act rule 18a-6(b)(1)(v) relating to Exchange Act rule 18a-2;

(F) The requirements of Exchange Act rule 18a-6(b)(1)(vi) or (b)(2)(iii), as applicable, provided that:

(1) The Covered Entity is subject to and complies with the requirements of EMIR article 9(2); MiFID Org Reg articles 72(1) and 73; MiFID article 16(6); and WpHG section 83 paragraph 1; and

(2) With respect to the requirements of Exchange Act rule 18a-6(b)(1)(vi), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d pursuant to this Order;

(G) The requirements of Exchange Act rule 18a-6(b)(1)(vii) or (b)(2)(iv), as applicable, provided that:

(1) The Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 72(1) and 73; MiFIR article 25(1); EMIR article 9(2); MiFID article 16(6); and WpHG section 83 paragraph 1; and

(2) With respect to the requirements of Exchange Act rule 18a-6(b)(1)(vii), the Covered Entity applies substituted compliance for the requirements of Exchange

Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d pursuant to this Order;

(H) The requirements of Exchange Act rule 18a-6(b)(1)(viii), provided that:

(1) The Covered Entity is subject to and complies with the requirements of CRR articles 99, 294, 394, 415, 430 and Part Six: Title II and Title III; CRR Reporting ITS article 14 and annexes I-V and VIII-XIII, as applicable; and MiFID Org Reg article 72(1);

(2) The Covered Entity applies substituted compliance for the requirements of Exchange Act rule 18a-7(a)(1), (b), (c) through (h), and Exchange Act rule 18a-7(j) as applied to these requirements pursuant to this Order;

(3) With respect to the requirements of Exchange Act rule 18a-6(b)(1)(viii), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d pursuant to this Order;

(4) This Order does not extend to the requirements of Exchange Act rule 18a-6(b)(1)(viii)(L); and

(5) This Order does not extend to the requirements of Exchange Act rule 18a-6(b)(1)(viii)(M) relating to Exchange Act rule 18a-2.

(I) The requirements of Exchange Act rule 18a-6(b)(1)(ix), provided that:

(1) The Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 22(3)(c), 23, 24, 25(2), 26, 29(2)(c), 35 and 72(1); CRR articles 176, 286 and 293(1)(d); EMIR RTS; EMIR article 9(2); MiFID articles 16(2), 16(3), 16(5), 24(9); MiFID Delegated Directive article 11; CRD article 73, 75-87; WpHG sections 64 paragraph 3, 70, 80 paragraph 6, and 84; WpDVerOV section 6; and KWG sections 10a, 25a, 25c(3)(3), 25c(3)(4), 25c(4a), 25d(6), 25(8); and

(2) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d pursuant to this Order;

(J) The requirements of Exchange Act rule 18a-6(b)(1)(x), provided that:

(1) The Covered Entity is subject to and complies with the requirements of EMIR article 9(2); MiFID Org Reg article 72(1); CRD article 73; MiFID article 16(6); KWG section 10a; and WpHG section 83 paragraph 1; and

(2) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d pursuant to this Order;

(K) The requirements of Exchange Act rule 18a-6(b)(1)(xi) or (b)(2)(vii), as applicable, regarding one or more provisions of Exchange Act rules 15Fh-3 or 15Fk-1 for which substituted compliance is available under this Order, provided that:

(1) The Covered Entity is subject to and complies with the requirements of EMIR article 9(2); MLD4 articles 11 and 13; MiFID Org Reg article 72(1); MiFID article 16(6); GWG sections 10 and 11; and WpHG section 83 paragraph 1, in each case with respect to the relevant security-based swap or activity;

(2) With respect to the portion of Exchange Act rule 18a-6(b)(1)(xi) or (b)(2)(vii) that relates to Exchange Act rule 15Fh-3, the Covered Entity applies substituted compliance for such business conduct standard(s) of Exchange Act rule 15Fh-3

pursuant to this Order, as applicable, with respect to the relevant security-based swap or activity; and

(3) With respect to the portion of Exchange Act rule 18a-6(b)(1)(xii) or (b)(2)(vii), as applicable, that relates to Exchange Act rule 15Fk-1, the Covered Entity applies substituted compliance for Exchange Act section 15F(k) and Exchange Act rule 15Fk-1 pursuant to this Order;

(L) The requirements of Exchange Act rule 18a-6(c), provided that:

(1) The Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 21(1)(f) and 72(1); MiFID article 16(6); and WpHG section 83 paragraph 1; and

(2) This Order does not extend to the requirements of Exchange Act rule 18a-6(c) relating to Forms SBSE, SBSE-A, SBSE-C, SBSE-W, all amendments to these forms, and all other licenses or other documentation showing the registration of the Covered Entity with any securities regulatory authority or the U.S. Commodity Futures Trading Commission;

(M) The requirements of Exchange Act rule 18a-6(d)(1), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 35 and 72(1); CRD articles 88, 91(1), 91(8); MiFID article 9(1), 16(3), 16(6); KWG sections 25c(1) through (3), 25d(1) through (3), and 36; and WpHG sections 81(1), 83 paragraph 1, and 84;

(N) The requirements of Exchange Act rule 18a-6(d)(2), provided that:

(1) The Covered Entity is subject to and complies with the requirements of EMIR article 9(2); MiFID Org Reg articles 72(1) and 72(3); MiFID article 16(6); and WpHG section 83 paragraph 1; and

(2) With respect to the requirements of Exchange Act rule 18a-6(d)(2)(i), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d pursuant to this Order;

(O) The requirements of Exchange Act rule 18a-6(d)(3), provided that:

(1) The Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 21(1)(f), 72, 73, and Annex I; MiFID article 16(6); and WpHG section 83 paragraph 1; and

(2) With respect to the requirements of Exchange Act rule 18a-6(d)(3)(i), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d pursuant to this Order;

(P) The requirements of Exchange Act rule 18a-6(d)(4) and (d)(5), provided that:

(1) The Covered Entity is subject to and complies with the requirements of EMIR article 9(2); MiFID Org Reg articles 24, 25(2), 72(1) and 73; MiFID articles 16(2), 16(6), and 25(5); and WpHG sections 64 paragraph 3 and 83 paragraphs 1 and 2; and

(2) The Covered Entity applies substituted compliance for Exchange Act rules 15Fi-3, 15Fi-4, and 15Fi-5 pursuant to this Order;

(Q) The requirements of Exchange Act rule 18a-6(e), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 21(2), 58, 72(1) and 72(3); MiFID articles 16(5),

16(6); and WpHG sections 80 paragraph 6, and 83 paragraph 1; and

(R) The requirements of Exchange Act rule 18a-6(f), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg article 31(1); MiFID article 16(5); and WpHG section 80 paragraph 6.

(ii) Paragraph (f)(2)(i) is subject to the following further conditions:

(A) A Covered Entity may apply the substituted compliance determination in paragraph (f)(2)(i)(K) to records related to Exchange Act rule 15Fh-3(b), (c), (e), (f) and (g) in respect of one or more security-based swaps or activities related to security-based swaps; and

(B) This Order does not extend to the requirements of Exchange Act rule 18a-6(b)(1)(xi), (b)(1)(xiii), (b)(2)(v), (b)(2)(vi), or (b)(2)(viii).

(3) *File Reports.* The requirements of the following provisions of Exchange Act rule 18a-7, provided that the Covered Entity complies with the relevant conditions in this paragraph (f)(3):

(i) The requirements of Exchange Act rule 18a-7(a)(1) or (a)(2), as applicable, and the requirements of Exchange Act rule 18a-7(j) as applied to the requirements of Exchange Act rule 18a-7(a)(1) or (a)(2), as applicable, provided that:

(A) The Covered Entity is subject to and complies with the requirements of CRR articles 99, 394, 430 and Part Six: Title II and Title III; CRR Reporting ITS annexes I, II, III, IV, V, VIII, IX, X, XI, XII and XIII, as applicable;

(B) The Covered Entity files periodic unaudited financial and operational information with the Commission or its designee in the manner and format required by Commission rule or order and presents the financial information in the filing in accordance with generally accepted accounting principles that the Covered Entity uses to prepare general purpose publicly available or available to be issued financial statements in Germany;

(C) With respect to the requirements of Exchange Act rule 18a-7(a)(1), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d pursuant to this Order; and

(D) With respect to the requirements of Exchange Act rule 18a-7(a)(1), the Covered Entity applies substituted compliance for the requirements of Exchange Act rule 18a-6(b)(1)(viii) pursuant to this Order;

(ii) The requirements of Exchange Act rule 18a-7(a)(3) and the requirements of Exchange Act rule 18a-7(j) as applied to the requirements of Exchange Act rule 18a-7(a)(3), provided that:

(A) The Covered Entity is subject to and complies with the requirements of CRR articles 99, 394, 431, 433, 452, 454, and 455; CRR Reporting ITS annexes I, II, VIII and IX, as applicable; and

(B) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d pursuant to this Order;

(iii) The requirements of Exchange Act rule 18a-7(b), provided that:

(A) The Covered Entity is subject to and complies with the requirements of CRR articles 431 through 455; and HGB sections 316 and 325; and

(B) The Covered Entity applies substituted compliance for the requirements of Exchange Act rule 18a-6(b)(1)(viii) pursuant to this Order.

(iv) The requirements of Exchange Act rule 18a-7(c), (d), (e), (f), (g) and (h) and the requirements of Exchange Act rule 18a-7(j) as applied to the requirements of paragraphs (c), (d), (e), (f), (g) and (h) of Exchange Act rule 18a-7, provided that:

(A) The Covered Entity is subject to and complies with the requirements of CRR articles 26(2), 132(5), 154, 191, 321, 325bi, 350, 353, 368, 418; HGB sections 316 and 325; WpHG section 24 and 84, and 89 (1) sentence 1 no. 1; and KWG section 26a(1);

(B) With respect to financial statements the Covered Entity is required to file annually with the German BaFin, including a report of an independent public accountant covering the financial statements, the Covered Entity:

(1) Simultaneously sends a copy of such annual financial statements and the report of the independent public accountant covering the annual financial statements to the Commission in the manner specified on the Commission's website;

(2) Includes with the transmission the contact information of an individual who can provide further information about the financial statements and report;

(3) Includes with the transmission the report of an independent public accountant required by Exchange Act rule 18a-7(c)(1)(i)(C) covering the annual financial statements if German laws do not require the Covered Entity to engage an independent public accountant to prepare a report covering the annual financial statements; provided, however, that such report of the independent public accountant may be prepared in accordance with generally accepted auditing standards in Germany that the independent public accountant uses to perform audit and attestation services and the accountant complies with German independence requirements;

(4) Includes with the transmission the reports required by Exchange Act rule 18a-7(c)(1)(i)(B) and (C) addressing the statements identified in Exchange Act rule 18a-7(c)(3) or (c)(4), as applicable, that relate to Exchange Act rule 18a-4; provided, however, that the report of the independent public accountant required by Exchange Act rule 18a-7(c)(1)(i)(C) may be prepared in accordance with generally accepted auditing standards in Germany that the independent public accountant uses to perform audit and attestation services and the accountant complies with German independence requirements; and

(5) Includes with the transmission the supporting schedules and reconciliations, as applicable, required by Exchange Act rules 18a-7(c)(2)(ii) and (iii), respectively, relating to Exchange Act rule 18a-2; and

(6) Includes with the transmission the supporting schedules and reconciliations, as applicable, required by Exchange Act rules 18a-7(c)(2)(ii) and (iii), respectively, relating to Exchange Act rules 18a-4 and 18a-4a;

(C) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d pursuant to this Order; and

(D) The Covered Entity applies substituted compliance for the requirements of Exchange Act rule 18a-6(b)(1)(viii) pursuant to this Order.

(4)(i) *Provide Notification.* The requirements of the following provisions of Exchange Act rule 18a-8, provided that the Covered Entity complies with the relevant conditions in this paragraph (f)(4)(i) and with the applicable conditions in paragraph (f)(4)(ii):

(A) The requirements of paragraphs (a)(1)(i), (a)(1)(ii), (b)(1), (b)(2), and (b)(4) of Exchange Act rule 18a-8 and the requirements of Exchange Act rule 18a-8(h) as applied to the requirements of paragraphs (a)(1)(i), (a)(1)(ii), (b)(1), (b)(2), and (b)(4) of Exchange Act rule 18a-8, provided that:

(1) The Covered Entity is subject to and complies with the requirements of CRR article 366(5); KWG section 25a (1) sentence 6 no. 3; and FinDAG section 4d; and

(2) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d pursuant to this Order;

(B) The requirements of Exchange Act rule 18a-8(c) and the requirements of Exchange Act rule 18a-8(h) as applied to the requirements of Exchange Act rule 18a-8(c), provided that the Covered Entity is subject to and complies with the requirements of KWG section 25a(1) sentence 6 no. 3; and FinDAG section 4d;

(C) The requirements of Exchange Act rule 18a-8(d) and the requirements of Exchange Act rule 18a-8(h) as applied to the requirements of Exchange Act rule 18a-8(d), provided that:

(1) The Covered Entity is subject to and complies with the requirements of KWG section 25a(1) sentence 6 no. 3; and FinDAG section 4d; and

(2) This Order does not extend to the requirements of Exchange Act rule 18a-8(d) to give notice with respect to books and records required by Exchange Act rule 18a-5 for which the Covered Entity does not apply substituted compliance pursuant to this Order;

(D) The requirements of Exchange Act rule 18a-8(e) and the requirements of Exchange Act rule 18a-8(h) as applied to the requirements of Exchange Act rule 18a-8(e), provided that:

(1) The Covered Entity is subject to and complies with the requirements of KWG section 25a(1) sentence 6 no. 3; and FinDAG section 4d;

(2) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d pursuant to this Order;

(3) This Order does not extend to the requirements of Exchange Act rule 18a-8(e) relating to Exchange Act rule 18a-2 or to the requirements of Exchange Act rule 18a-8(h) as applied to the requirements of Exchange Act rule 18a-8(e) relating to Exchange Act rule 18a-2; and

(4) This Order does not extend to the requirements of Exchange Act rule 18a-8(e)

relating to Exchange Act rule 18a-4 or to the requirements of Exchange Act rule 18a-8(h) as applied to the requirements of Exchange Act rule 18a-8(e) relating to Exchange Act rule 18a-4;

(ii) Paragraph (f)(4)(i) is subject to the following further conditions:

(A) The Covered Entity:

(1) Simultaneously sends a copy of any notice required to be sent by German law cited in this paragraph of the Order to the Commission in the manner specified on the Commission's website; and

(2) Includes with the transmission the contact information of an individual who can provide further information about the matter that is the subject of the notice;

(B) This Order does not extend to the requirements of paragraphs (a)(2) and (b)(3), and of Exchange Act rule 18a-8 relating to Exchange Act rule 18a-2 or to the requirements of Exchange Act rule 18a-8(h) as applied to the requirements of Exchange Act rule 18a-8 relating to Exchange Act rule 18a-2;

(C) This Order does not extend to the requirements or to the requirements of Exchange Act rule 18a-8(h) as applied to the requirements of paragraph (g) of rule 18a-8.

(5) *Securities Courts.* The requirements of Exchange Act rule 18a-9, provided that:

(1) The Covered Entity is subject to and complies with the requirements of EMIR article 11(1)(b); EMIR RTS articles 12 and 13; WpHG section 84; HGB sections 316 and 325; and WpHG section 89 (1) sentence 1 no. 1; and

(2) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d pursuant to this Order.

(6) *Daily Trading Records.* The requirements of Exchange Act section 15F(g), provided that the Covered Entity is subject to and complies with the requirements of WpHG section 83 paragraph 1; and MiFID Org Reg article 21(1)(f), 21(4), and 72(1).

(7) *Examination and Production of Records.* Notwithstanding the forgoing provisions of paragraph (f) of this Order, this Order does not extend to, and Covered Entities remain subject to, the requirement of Exchange Act section 15F(f) to keep books and records open to inspection by any representative of the Commission and the requirement of Exchange Act rule 18a-6(g) to furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the Covered Entity that are required to be preserved under Exchange Act rule 18a-6, or any other records of the Covered Entity that are subject to examination or required to be made or maintained pursuant to Exchange Act section 15F that are requested by a representative of the Commission.

(8) *English Translations.* Notwithstanding the forgoing provisions of paragraph (f) of this Order, to the extent documents are not prepared in the English language, Covered Entities must promptly furnish to a representative of the Commission upon request an English translation of any record, report, or notification of the Covered Entity that is required to be made, preserved, filed, or subject to examination pursuant to Exchange Act section 15F of this Order.

(g) Definitions.

(1) "Covered Entity" means an entity that:

(i) Is a security-based swap dealer or major security-based swap participant registered with the Commission;

(ii) Is not a "U.S. person," as that term is defined in rule 3a71-3(a)(4) under the Exchange Act; and

(iii) Is an investment firm and/or credit institution that is authorized by BaFin to provide investment services or perform investment activities in Germany and is supervised by the ECB (or has a licensing application pending with the ECB as of August 12, 2021) as a significant institution.

(2) "MiFID" means the "Markets in Financial Instruments Directive," Directive 2014/65/EU, as amended from time to time.

(3) "WpHG" means Germany's "Wertpapierhandelsgesetz," as amended or superseded from time to time.

(4) "MiFID Org Reg" means Commission Delegated Regulation (EU) 2017/565, as amended from time to time.

(5) "MiFID Delegated Directive" means Commission Delegated Directive (EU) 2017/593, as amended from time to time.

(6) "MLD" means Directive (EU) 2015/849, as amended from time to time.

(7) "GwG" means Germany's "Geldwäschegesetz," as amended from time to time.

(8) "MiFIR" means Regulation (EU) 600/2014, as amended from time to time.

(9) "EMIR" means the "European Market Infrastructure Regulation," Regulation (EU) 648/2012, as amended from time to time.

(10) "EMIR RTS" means Commission Delegated Regulation (EU) 149/2013, as amended from time to time.

(11) "EMIR Margin RTS" means Commission Delegated Regulation (EU) 2016/2251, as amended from time to time.

(12) "CRR Reporting ITS" means Commission Implementing Regulation (EU) 680/2014, as amended from time to time.

(13) "CRD" means Directive 2013/36/EU, as amended from time to time.

(14) "KWG" means Germany's "Kreditwesengesetz," as amended from time to time.

(15) "CRR" means Regulation (EU) 575/2013, as amended from time to time.

(16) "MAR" means the "Market Abuse Regulation," Regulation (EU) 596/2014, as amended from time to time.

(17) "MAR Investment Recommendations Regulation" means Commission Delegated Regulation (EU) 2016/958, as amended from time to time.

(18) "FinDAG" means Germany's "Finanzdienstleistungsaufsichtsgesetz," as amended from time to time.

(19) "BaFin" means the Bundesanstalt für Finanzdienstleistungsaufsicht.

(20) "ECB" means the European Central Bank.

(21) "WpDVerOV" means Germany's "Wertpapierdienstleistungs-Verhaltens- und -Organisationsverordnung," as amended from time to time.

(22) "SAG" means Germany's "Sanierungs- und Abwicklungsgesetz," as amended from time to time.

(23) “SolvV” means Germany’s “*Solvabilitätsverordnung*,” as amended from time to time.

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Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Georgetown and Salado Salamanders; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R2-ES-2020-0048;
FF09E21000 FXES1111090000 212]

RIN 1018-BE78

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Georgetown and Salado Salamanders

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the Georgetown salamander (*Eurycea naufragia*) and Salado salamander (*Eurycea chisholmensis*) under the Endangered Species Act of 1973, as amended (Act). We designate a total of approximately 1,315 acres (538 hectares) of critical habitat for these species in Bell and Williamson Counties, Texas. This rule extends the Act's protections to the Georgetown salamander's and Salado salamander's designated critical habitat.

DATES: This rule is effective September 17, 2021.

ADDRESSES: This final rule is available on the internet at <http://www.regulations.gov> and at <http://www.fws.gov/southwest/es/austintexas>. Comments and materials we received, as well as some supporting documentation we used in preparing this rule, are available for public inspection at <http://www.regulations.gov> at Docket No. FWS-R2-ES-2020-0048.

The coordinates or plot points or both from which the maps are generated are included in the decision file for this critical habitat designation and are available at <http://www.regulations.gov> at Docket No. FWS-R2-ES-2020-0048 and at the Austin Ecological Services Field Office's website (<https://www.fws.gov/southwest/es/austintexas/>). Any additional tools or supporting information that we developed for this critical habitat designation will also be available at the Service website and may also be included in this preamble and/or at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Rd., Suite 200, Austin, TX 78758; telephone 512-490-0057. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, if we determine that a species is an endangered or threatened species, we must designate critical habitat to the maximum extent prudent and determinable. We published a final rule to list the Georgetown salamander and Salado salamander as threatened species on February 24, 2014 (79 FR 10236). Designations of critical habitat can be completed only by issuing a rule.

What this document does. This rule designates a total of approximately 1,315 acres (ac) (538 hectares (ha)) as critical habitat for the Georgetown and Salado salamanders in Bell and Williamson Counties, Texas.

The basis for our action. Under section 4(a)(3) of the Act, if we determine that any species is an endangered or threatened species, we must, to the maximum extent prudent and determinable, designate critical habitat. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species.

Economic analysis. In accordance with section 4(b)(2) of the Act, we prepared an economic analysis of the impacts of designating critical habitat for the Georgetown and Salado salamanders. We published the announcement of, and solicited public comments on, the draft economic analysis (DEA; 85 FR 57578, September 15, 2020).

Previous Federal Actions

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for the Georgetown and Salado salamanders in this rule. For more information on the Georgetown and Salado salamanders, their habitat, or previous Federal actions, refer to the final listing rule published in the **Federal Register** on February 24, 2014 (79 FR 10236), which is available online at <http://www.regulations.gov> at Docket No. FWS-R2-ES-2012-0035.

On August 22, 2012, we published a proposed rule (77 FR 50768) to list the Georgetown salamander (*Eurycea naufragia*), Salado salamander (*Eurycea chisholmensis*), Jollyville Plateau salamander (*Eurycea tonkawae*), and Austin blind salamander (*Eurycea waterlooensis*) as endangered species and to designate critical habitat for these species under the Act (16 U.S.C. 1531 *et seq.*). We proposed to designate approximately 1,031 acres (ac) (423 hectares (ha)) in 14 units located in Williamson County, Texas, as critical habitat for the Georgetown salamander, and approximately 372 ac (152 ha) in 4 units located in Bell County, Texas, as critical habitat for the Salado salamander. That proposal had a 60-day comment period, ending October 22, 2012. We held a public meeting and hearing in Round Rock, Texas, on September 5, 2012, and a second public meeting and hearing in Austin, Texas, on September 6, 2012.

On January 25, 2013, we published a proposed rule (78 FR 5385) revising the locations of proposed critical habitat units 2, 3, 5, 8, and 12 for the Georgetown salamander based on new information. We reopened the public comment period for 45 days, ending March 11, 2013, to allow comments on the revisions to the proposed critical habitat and the draft economic analysis.

On August 20, 2013, we announced our decision to extend the deadline for our final listing and critical habitat determination for the Georgetown and Salado salamanders for 6 months due to scientific disagreements regarding conservation status of these species and reopened the comment periods on our August 22, 2012, and January 25, 2013, proposals for 30 days (78 FR 51129). In addition, on January 7, 2014, we announced the availability of new information and reopened the previous comment periods for an additional 15 days, until January 22, 2014 (79 FR 800).

On February 24, 2014, we published: (1) A final rule (79 FR 10236) to list the Georgetown and Salado salamanders as threatened species under the Act; and

(2) a proposed rule (79 FR 10077) under section 4(d) of the Act (a proposed “4(d) rule”) containing regulations necessary and advisable to provide for the conservation of the Georgetown salamander, with a 60-day public comment period, ending April 25, 2014.

On April 9, 2015, we published a revised proposed 4(d) rule for the Georgetown salamander (80 FR 19050); that document reopened the public comment period on the proposed 4(d) rule for 30 days, ending May 11, 2015. On August 7, 2015, we published a final 4(d) rule for the Georgetown salamander (80 FR 47418).

On September 15, 2020, we published a proposed rule (85 FR 57578) to revise our proposed designation of critical habitat for the Georgetown and Salado salamanders. Based on published genetic analyses, we revised the distribution of the Georgetown and Salado salamanders and adjusted previously proposed critical habitat units accordingly. We also proposed changes to our description of the physical or biological features essential to the conservation of the species. We proposed a total of approximately 1,519 ac (622 ha) of critical habitat for the species in Bell and Williamson Counties, Texas. The total amount of critical habitat proposed for both salamanders increased by approximately 116 ac (47 ha). The reasons for this increase were the addition of a new occupied site for the Salado salamander and refined mapping of previously proposed critical habitat units based on more precise spring locations. That proposal had a 60-day comment period, ending November 16, 2020.

Summary of Changes From the September 15, 2020, Proposed Rule

As noted above, we published three proposed rules concerning the designation of critical habitat for the Georgetown and Salado salamanders (77 FR 50768, August 22, 2012; 78 FR 5385, January 25, 2013; 85 FR 57578, September 15, 2020), as well as other relevant documents concerning these species. In doing so, we gathered public comments on the proposed critical habitat and its revisions during multiple comment periods, and we obtained new and updated scientific information following the publication of the 2012 proposed rule. Accordingly, the critical habitat we are designating in this rule differs from what we originally proposed to designate as critical habitat for these species in 2012. Please see the January 25, 2013, and September 15, 2020, proposed rules for a discussion of our proposed revisions to the August 22,

2012, proposed critical habitat, and the reasons for those revisions. This summary discusses only the changes we make in this final rule from the September 15, 2020, proposed rule.

This final rule incorporates changes to our September 15, 2020, proposed rule (85 FR 57578) based on the comments we received, as discussed below under Summary of Comments and Recommendations. Based on those comments, in this rule, we revise our discussion under Physical or Biological Features Essential to the Conservation of the Species, specifically the discussion of aspects of salamander movement from spring openings, potential prey, and water quality parameters. We also revise our discussion under Criteria Used To Identify Critical Habitat to provide additional clarity. Finally, we exclude three critical habitat units for the Salado salamander, totaling approximately 204 ac (84 ha), as identified below in Table 3. These exclusions account for the difference between the approximately 1,519 ac (622 ha) we proposed for designation as critical habitat for the two salamanders in our September 15, 2020, proposed rule (85 FR 57578) and the approximately 1,315 ac (538 ha) we are designating as critical habitat for the species in this rule.

Summary of Comments and Recommendations

In the proposed rule published on September 15, 2020 (85 FR 57578), we requested that all interested parties submit written comments on the proposal by November 16, 2020. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. Newspaper notices inviting general public comment were published in the Temple Daily Telegram and Williamson County Sun. We did not receive any requests for a public hearing. During the open comment period, we received 25 public comments on the proposed rule to designate critical habitat for the Georgetown and Salado salamanders. Some commenters provided suggestions on how we could refine or improve the designation, and all substantive information provided to us during the comment period has been incorporated directly into this final rule or is addressed below.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review actions under the

Act, we solicited expert opinion on the proposed critical habitat from five knowledgeable individuals with scientific expertise that includes familiarity with the Georgetown and Salado salamanders and their taxonomy, habitat, biological needs, and threats. We received responses from three of the peer reviewers. The purpose of peer review is to ensure that our critical habitat designations are based on scientifically sound data, assumptions, and analyses.

We reviewed all the comments we received from the peer reviewers for substantive issues and new information regarding the Georgetown and Salado salamanders and their habitat use and needs. The peer reviewers generally concurred with the information regarding the Georgetown and Salado salamanders' taxonomy and habitat. In some cases, they provided additional information, clarifications, and suggestions to improve the designation. The reviewers also provided or corrected references we cited in the September 15, 2020, proposed rule. The additional details and information have been incorporated into this final rule as appropriate. Substantive comments we received from peer reviewers as well as local governments, nongovernmental organizations, and the public are outlined below.

Peer Review Comments

Comment 1: One peer reviewer recommended subsurface areas designated as critical habitat should be larger considering that the Georgetown and Salado salamanders heavily rely upon subterranean habitat. Specifically, more emphasis should be placed on the recharge zones that allow water to enter the aquifer that supports habitat for these species.

Our Response: In accordance with section 3(5)(A) of the Act, we are designating critical habitat in specific areas within the geographical area occupied by the species at the time of listing that contain the physical or biological features essential to the conservation of the species and which may require special management considerations or protection. We acknowledge that the recharge zone of the aquifer supporting salamander locations is very important to the conservation of these species. However, our goal with this critical habitat designation is to delineate the habitat that is physically occupied and used by the species rather than delineate all land or aquatic areas that influence the species. There is no evidence to support that the entire recharge zone of the

aquifers is occupied by the salamander species.

Public Comments

Comment 2: One commenter requested that Solana Ranch in Bell County be excluded from the final critical habitat designation because the area occupied by the Salado salamander is protected by a conservation easement monitored by The Nature Conservancy.

Our Response: In this final rule, we exclude 204 ha (84 ac) of private land within the boundaries of the 256 ac (104 ha) Solana Ranch under perpetual conservation easement, from our designation of critical habitat (see Exclusions, below). When considering the benefits of exclusion based on a current land management or conservation plan, we examine a number of different criteria (see Exclusions, below, in this rule). Among these is the likelihood that the conservation strategies in the plan will be effective. The conservation easement, established on a portion of the Solana Ranch (*i.e.*, Solana Ranch Preserve) in 2016, includes management activities such as maintenance of the site as permanent open space that has been left in its natural vegetative state, maintenance and repair of existing enclosure fences around springs, and research approved by the landowner. In addition, we evaluate if the conservation management strategies and actions in the plan will be implemented into the future, based on past practices, written guidance, or regulations. The perpetual Solana Ranch Preserve conservation easement will result in long-term protection of three springs located on Solana Ranch, including areas immediately upstream of the springs to maintain water quality. By protecting the springs and their surrounding areas, occupied Salado salamander habitat will be protected from development and other threats.

Comment 3: One commenter stated their view that the Service did not make the case that all areas considered as occupied critical habitat met the Act's standard that they be occupied at the time of listing. The September 15, 2020, proposed rule added several new critical habitat units based on discoveries made since the original 2012 proposed designation, but the Service does not make the required showing that these locations were occupied at the time of listing. The September 15, 2020, proposed rule also did not establish that the areas proposed for designation continue to be occupied. Instead, the proposal acknowledged the difficulty in determining whether a salamander population has been

extirpated from a spring site due to these species' ability to occupy the inaccessible subsurface habitat. The commenter believes this approach is inadequate to establish occupancy.

Our Response: In our September 15, 2020, proposed rule, we explain the evidence for the inclusion of the new proposed critical habitat units, and we conclude that the additional areas of proposed critical habitat were occupied at the time of listing (see 85 FR 57583). Additionally, we state in our September 15, 2020, proposed rule that as critical habitat units were shifted from the Georgetown salamander to the Salado salamander, based on Devitt et al. (2019, entire), critical habitat units for both species were re-numbered. New locations for Salado salamander were also discovered through sampling efforts after January 25, 2013. Georgetown and Salado salamanders are restricted to subterranean spaces in aquifers and on the surface to springs and associated outflow where groundwater emerges from the underlying aquifer. They are not capable of unaided, long-distance surface dispersal between isolated springs given their aquatic life history. Most springs in Bell and Williamson Counties and their underlying aquifer connections are historical landscape features that predate European settlement of the North American continent (Brune 1981, pp. 65–69, 473–476). Therefore, we conclude that these Salado salamander sites were occupied at the time of listing and we are designating critical habitat in specific areas within the geographical area occupied by the species at the time of listing that contain the physical or biological features essential to the conservation of the species and which may require special management considerations or protection, as directed by the Act.

We are required to make determinations based on the best available information, and the Devitt et al. (2019) peer-reviewed publication used to inform the September 15, 2020, revisions to our proposed critical habitat for these species, as well as this final rule designating critical habitat for these species, is the best available information.

Comment 4: One commenter stated that because the September 15, 2020, proposed rule contained all known locations of the salamander species in the proposed critical habitat designation, it is contrary to the statement in section 3 of the Act that critical habitat shall not include the entire geographical area which can be occupied by the threatened or

endangered species (16 U.S.C. 1532(5)(C)).

Our Response: Section 3(C) of the Act says "Except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species." The Secretary has the discretion to designate the entire geographic area that can be occupied. However, the critical habitat we are designating in this rule does not include the entire geographical area which can be occupied by the species. We are designating only those specific areas within the geographical area occupied by the species, at the time it was listed in accordance with the provisions of section 4 of the Act, on which are found those physical or biological features that are essential to the conservation of the species.

Comment 5: Some commenters stated their belief that designating critical habitat for these two species is not prudent or is not determinable. These commenters believed that the two salamander species are better protected under the existing, local efforts than they would be with the proposed critical habitat designation. In their view, the existing conservation efforts for the species exceeds any conservation benefits that would be conferred if critical habitat were finalized.

Our Response: We appreciate and acknowledge all the hard work conservation partners and residents have voluntarily undertaken to help conserve both species of salamander. However, in our proposed rule we concluded that critical habitat is both prudent and determinable for Georgetown salamander and Salado salamander (85 FR 57578; September 15, 2020), and we affirm those determinations in this final rule.

Based on the best available scientific evidence at the time of this final rule, the surface critical habitat component was delineated by starting with the spring point locations that are occupied by the salamanders and extending a line upstream and downstream 262 ft (80 m), because this is the farthest a member species of the *Eurycea* salamander subgenus *Septentriomolge* (which includes the Georgetown and Salado salamanders) has been observed from a spring outlet. The subsurface critical habitat was delineated based on evidence that indicates a *Eurycea* salamander population can extend at least 984 ft (300 m) from the spring opening through underground conduits. We defined an area as occupied based upon the reliable observation of a salamander species by a knowledgeable

scientist and cited within published articles, unpublished reports, and Service files including Hunter and Russell (1993, p. 7–8), Pierce and Wall (2011, pp. 2–3), Chippindale et al. (2000, pp. 39–43), Diaz and Montagne (2017, p. 6), Cambrian Environmental (2018b, pp. 5–6), Devitt et al. (2019a, pp. 2,626, 2,628), and Devitt et al. (2019b, pp. 16–18). Although we do not have data for every site indicating that a salamander was observed 262 ft (80 m) downstream, we find that it is reasonable to consider the downstream habitat occupied based on the dispersal capabilities observed in individuals of very similar species. See Criteria Used To Identify Critical Habitat, below, for more information.

Comment 6: Some commenters questioned the Service's reliance on the proposed 262-ft (80-m) surface designation for its divergence from available literature, incorrect assumption of identical spring sites, and significant discrepancies between the text description and proposed maps. Commenters noted that, the Service states Salado salamanders are rarely found more than 66 ft (20 m) from a spring source and are most abundant within the first 16 ft (5 m). Therefore, the Service's proposed 262-ft (80-m) radius surface designation is inconsistent with the best available science.

Our Response: When determining surface critical habitat boundaries, we were not able to delineate specific stream segments on maps due to the small size of the streams. Therefore, we drew a circle with a 262-ft (80-m) radius, from spring point locations, representing the extent the surface population of the site is estimated to exist upstream and downstream. Georgetown and Salado salamanders are generally found within 66 ft (20 m) of a spring source (TPWD 2011, p. 3; Diaz et al. 2015, p. 7) but several studies have documented these salamanders beyond that distance up to 194 ft (59 m) away (Pierce et al. 2011a, p. 4; Pierce 2015, p. 13; Pierce 2016, pp. 14, 17, 19; Gutierrez et al. p. 386). In addition, the closely related Jollyville Plateau salamander has been observed 262 ft (80 m) from a spring opening (Bendik et al. 2016, p. 9). Given the close taxonomic relationship of the Georgetown, Jollyville Plateau, and Salado salamanders we applied that distance (*i.e.*, 262 ft (80 m) in designating surface critical habitat boundaries. Surface critical habitat includes the spring outlets and outflow up to the ordinary high water mark (the average amount of water present in nonflood conditions, as defined in 33 CFR 328.3(e)) and 262 ft (80 m) of

upstream and downstream habitat (to the extent that this habitat is ever present), including the dry stream channel during periods of no surface flow. Upland habitat adjacent to streams, left inside surface critical habitat boundaries shown on the maps of this final rule, have been excluded by text in the final rule and are not designated as critical habitat. Therefore, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the designated subsurface or surface critical habitat (see *Application of the "Destruction or Adverse Modification" Standard*, below). We defined an area as occupied based upon the reliable observations of Georgetown and/or Salado salamander species by a knowledgeable scientist and cited within published articles, unpublished reports, and Service files including Hunter and Russell (1993, p. 7–8), Pierce and Wall (2011, pp. 2–3), Chippindale et al. (2000, pp. 39–43), Diaz and Montagne (2017, p. 6), Cambrian Environmental (2018b, pp. 5–6), Devitt et al. (2019a, pp. 2,626, 2,628), and Devitt et al. (2019b, pp. 16–18). Although we do not have data for every site indicating that a salamander was observed 262 ft (80 m) downstream, we conclude it is reasonable to consider the downstream habitat occupied based on the dispersal capabilities observed in individuals of the same species or very similar species. See Criteria Used To Identify Critical Habitat, below, for more information.

Comment 7: The Bell County Adaptive Management Coalition and others commented that the use of a 984-ft (300-m) subsurface designation is not consistent with available literature, and provided two references in support of this conclusion, from the Clearwater Underground Water Conservation District and Baylor University. The 984-ft (300-m) subsurface designation, as delineated by the Service, is not consistent with Baylor University research, which indicated that the geology and hydrology of the subsurface feature (*i.e.*, springshed) do not match the delineations proposed by the Service. Much of the subsurface delineations do not actually contribute to the spring flow for the occupied sites; thus, their inclusion within critical habitat would improperly subject those areas to the same regulations as areas that actually have an impact on the salamander and its habitat.

Our Response: The commenter suggested that we should restrict the

subsurface critical habitat designation to an area that they defined as the contributing springshed. We reviewed the information provided by the Clearwater Underground Water Conservation District and Baylor University and determined that there is not enough information to modify our original 984-ft (300-m) circular subsurface designation for these sites without further long-term study. Wong and Yelderman (2015, pp. 8–15) found connectivity between Stagecoach Inn Cave well and all the down-gradient springs indicating the Salado salamander, and other mobile aquatic organisms, can move throughout the entire spring system and it should be grouped as one system. If toxins entered Salado Creek, groundwater flows could carry the toxins to occupied salamander springs. The proposed 984-ft (300-m) radius subsurface designation is an area that represents where salamander populations are likely to exist, which is further supported from studies conducted on the Austin blind salamander that showed their presence throughout the entire underground Barton Springs complex (Dries 2011, pers. comm.). Regarding the Coalition's concern about holding areas outside the springshed to the same standards as within the springshed, Salado Creek is a gaining stream (*i.e.*, reaches of a stream where groundwater exits the subsurface and contributes to stream flow) near downtown Salado. Therefore, pollution introduced to Salado Creek could enter the aquifer system providing water to springs occupied by the Salado salamander.

The Coalition identified Edwards Aquifer Recharge Zone and applied the springshed boundary mapped by Yelderman (2013, pp. 6–8) and Wong and Yelderman (2015, p. 4) to show a simplified groundwater flow system that indicates groundwater recharge to the spring is limited to southwestern sources. This approach was used to create a management area, which is a section of the watershed that they propose can impact the springs occupied by the Salado salamander. However, the Wong and Yelderman (2015, p. 22) study that the Coalition used to delineate this area also concluded that Salado Creek and nearby springs receive waters from the north bank (*i.e.*, Rock Spring), that is sourced from groundwater from the north and south of Salado Creek. Therefore, activities such as spills of hazardous materials north and south of Salado Creek could adversely impact groundwater, nearby springs, and salamander habitat. While we recognize

the uncertainty inherent in identifying subsurface habitat boundaries for these two salamander species, we used the best available scientific information to designate critical habitat, as required by the Act. A fuller understanding of all of the subsurface flow patterns and connections for every salamander site will require numerous years of research. The subsurface critical habitat was delineated based on evidence that indicates that a *Eurycea* salamander population can extend at least 984 ft (300 m) from the spring opening through underground conduits.

Comment 8: One commenter stated support for designating as unoccupied critical habitat reaches beyond the current 262-ft (80-m) extent of proposed critical habitat downstream and upstream of known salamander-occupied spring openings, and extending that to 1,640 ft (5,381 m) instead based on Bendik et al. (2016, p. 9). These streambeds and riverbeds trace the outlines of likely remaining and/or restorable subterranean aquatic connectivity for these salamanders. Maintaining such connectivity or restoring it where feasible is essential to their conservation and eventual recovery. Bendik et al. (2016, p. p. 9) indicates that the closely related Jollyville Plateau salamanders along Bull Creek that uses habitats as far as 1,640-ft (5,381-m) from its epigeal habitat. Designation of the full 1,640-ft (5,381-m) distance downstream and upstream as critical habitat would provide regulatory and educational means to manually rehabilitate degraded streambeds (for example, through revegetation) and to decrease human extraction of groundwater (for example, through retirement of agricultural lands) in order to effectuate conservation of these species, which is precisely the Act's purpose for critical habitat designation.

Our Response: We did not consider unoccupied areas for critical habitat because we determined that occupied areas were sufficient to conserve the species. In accordance with section 3(5)(A) of the Act, we are designating critical habitat in specific areas within the geographical area occupied by the species at the time of listing that contain the physical or biological features essential to the conservation of the species and which may require special management considerations or protection. The Service has developed a preliminary long-term conservation strategy that represents the overall objectives and actions that we believe are needed to conserve the salamanders (Service 2013, entire). The purpose of the strategy is to provide initial

guidance for conservation and threat alleviation. In general, this includes measures aimed at reducing or removing threats to the species and ensuring self-sustaining populations remain in the wild.

The unique hydrology where that Jollyville Plateau salamander observation was made leads us to conclude that it should not be extrapolated to the Georgetown and Salado salamanders. The area of Bull Creek where that observation was made is known for its alluvial deposits (COA 2012, p. 6), which discharge spring water through non-obvious seeps, instead of open springheads (SWCA 2012, p. 77). This type of hydrology appears to create suitable habitat for salamanders along long stretches of stream, rather than a short stretch of springwater-influenced habitat following an open spring outlet (Bendik 2013, pers. comm.). We have no information indicating that any Georgetown or Salado salamander sites function in the same manner as these Bull Creek alluvial resurgence areas. As currently known, Georgetown and Salado salamanders do not have access to the same extent or nature of aquatic surface habitat as the Jollyville Plateau salamander (Pierce et al. 2010, pp. 14–15). Therefore, we conclude that the 1,640 feet (500 meters) distance traveled by a Jollyville Plateau salamander is an observation unique to the hydrological setting and does not apply to Georgetown or Salado salamander sites.

The purpose of designating critical habitat is to identify those areas needed for a species' recovery. In this case, we designated habitat occupied by the species at the time it was listed on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection. While our designation of critical habitat does not remove the threat from urban development, for example, it does identify those areas that are critical to the conservation of the species, which provides awareness about occupied sites to nearby landowners and land managers, and it informs them that they should consider their impacts on those sites.

A critical habitat designation does not signal that habitat outside the designated area is unimportant or may not to be managed or conserved for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented

under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects outside of designated critical habitat areas may still result in jeopardy or in adverse effects on areas within critical habitat, if those activities are affecting the critical habitat.

Comment 9: One commenter provided a number of publications that they thought should be considered and referenced in the final rule.

Our Response: The contributions stakeholders, academic researchers, and others have made to advance knowledge on the Georgetown and Salado salamanders and their habitat is valued by the Service. Where relevant and appropriate, we have incorporated information from these efforts and cited peer-reviewed articles and unpublished reports pertaining to salamander dispersal, taxonomy, and water quality parameters including Cambrian Environmental (2016; 2017; 2018; 2019; 2020), Diaz et al. (2016; 2017), Diaz et al. (2020), Gutierrez et al. (2018), Jones et al. (2020), Pierce et al. (2014), and Wall et al. (2020). Other publications cited by the commenter provide valuable information on the life history (e.g., temporal activity and tail loss) of the Georgetown and/or Salado salamanders but were not directly relevant to this final critical habitat rule or more current information was available and include Biagas et al. (2012), McEntire and Pierce (2015), Norris et al. (2012), and Pierce and Gonzalez (2019). See Physical or Biological Features Essential to the Conservation of the Species, below, for more information.

Comment 10: One commenter opined that the Service does not identify the physical or biological features essential to the conservation of the Georgetown and Salado salamanders with an appropriate level of specificity as required by 50 CFR 424.12(b)(1)(ii). Although the Service describes each of the physical and biological features in some detail, the Service used studies relating to different species, the Jollyville Plateau salamander and Barton Springs salamander, in an attempt to infer further parallels as to the habitat requirements for the Georgetown and Salado salamanders. In the commenter's view, inferring parallels between species does not

comport with the contemporary scientific practice or the applicable legal standard because it's not specific to the conservation of the Georgetown and Salado salamanders.

Our Response: We conclude that the Jollyville Plateau salamander is an appropriate surrogate for determining habitat requirements for the Georgetown and Salado salamanders. The Jollyville Plateau, Georgetown, and Salado salamander species are within the same genus, are entirely aquatic throughout each portion of their life cycles, respire through gills, inhabit water of high quality with a narrow range of conditions, depend on water from the Edwards Aquifer, and have similar predators. Both the Jollyville Plateau and Georgetown salamanders have cave populations that live exclusively in subterranean habitats. Certain populations of the Salado salamander also appear to spend more time inhabiting subterranean habitat than surface habitats. These three biologically and ecologically similar species also form a related clade of *Eurycea* salamanders in the Northern Segment of the Edwards Aquifer, distinct from other *Eurycea* species in southern portions of the Edwards Aquifer. Peer reviewers of earlier proposed and final rules for the Georgetown, Jollyville Plateau, and Salado salamanders have agreed that it is acceptable to use and apply ecological information on closely related species if species-specific information is lacking. Based on this information, the best available scientific information supports our conclusion that these species are suitable surrogates for each other.

Comment 11: The September 15, 2020, proposed rule does not demonstrate that the proposed critical habitat units meet the definition of critical habitat. The Service proposes to designate occupied areas, which, by statutory definition, must have the physical and biological features essential to the conservation of the species that may require special management. Although the Service describes each of the physical and biological features in some detail, the Service does not identify the physical or biological features essential to the conservation of the Georgetown and Salado salamanders with an appropriate level of specificity. Instead, the Service used studies relating to a different species, the Jollyville Plateau salamander and Barton Springs salamander, in an attempt to infer further parallels as to the habitat requirements for the Georgetown and Salado salamanders.

Our Response: Occupied critical habitat always contains at least one or more of the physical or biological features that provide for some life-history needs of the listed species. However, an area of critical habitat may not contain all physical or biological features at the time it is designated, or those features or elements may be present but in a degraded or less than optimal condition. In the case of a highly urbanized salamander site, some physical or biological features such as rocky substrate and access to the subsurface habitat may be present, even if the water quality physical or biological feature is not. We consider these sites to meet the definition of critical habitat because they are occupied at the time of listing and contain those physical or biological features essential to the conservation of the species, which may require special management considerations or protection. See also our responses to *Comments 9 and 10, above.*

Comment 12: One commenter stated that we should not designate critical habitat for the Salado salamanders because public identification of habitat could increase impacts to the species and its habitat, in the form of site disturbance and harassment of the species.

Our Response: These sites are already publicly identified in several survey reports, in descriptions in scientific papers, and in our proposed critical habitat rules. The Service is not aware of any trade in these species or general collection, other than research, that would lead the Service to believe that there may be harm to the species in designating critical habitat.

Comment 13: The Bell County Adaptive Management Coalition stated that water quantity and quality degradation in Bell County is being addressed through various actions such as regulations, ordinances, and zoning. Because the Coalition has successfully managed the quality of water associated with the Salado salamander and its habitat, they did not agree that water quality and quantity degradation should be considered as a factor for critical habitat designation. The result is managed spring flow with sufficient water quantity for the Salado salamander, invalidating the need for critical habitat designation.

Our Response: We appreciate the efforts of Bell County to address water quality and quantity issues within the range of the Salado salamander. Bell County's efforts have ameliorated some of the threats to the Salado salamander and have provided protection to some of the critical habitat units. However,

additional threats to the species remain, including increased impervious cover, chemical spills from existing and future roadways, and leakage from sewer lines and septic systems.

The Service is not relieved of its statutory obligation to designate critical habitat based on the contention that designation will not provide additional conservation benefit. In *Ctr. for Biological Diversity v. Norton*, 240 F. Supp. 2d 1090 (D. Ariz. 2003), the court held that the Act does not direct us to designate critical habitat only in those areas where "additional" special management considerations or protection is needed. We find that the areas in question meet the definition of critical habitat in the Act.

Special management considerations that will ameliorate threats to surface habitat include, but are not limited to, protecting the quality of cave and spring water by implementing comprehensive programs to control and reduce point sources and non-point sources of pollution, minimizing the likelihood of pollution events or surface runoff from existing and future development that would affect groundwater quality, protecting groundwater and spring flow quantity, and measures to prevent surface habitat destruction or degradation (e.g., exclusion of cattle and feral hogs). Some of the management activities listed above, such as those that protect spring flow and groundwater quality, protect both surface and subsurface habitats, as these are interconnected.

Additional management activities that could ameliorate threats that are specific to subsurface habitat include, but are not limited to, the development and implementation of void mitigation plans for construction projects to prevent impacts to salamanders in the event of severed aquifer conduits or interrupted groundwater flow paths, site-specific plans to prevent changes to subsurface water flow from construction activities, environmental monitors during construction, excavation, and drilling activities to monitor spring flow, and post-construction monitoring of spring flow.

Comment 14: Some commenters believe that the Service should have determined that critical habitat for the species is not prudent because "designation is not wise, such as when a designation would apply additional regulation but not further the conservation of the species" (see p. 84 FR 45041). The State, Williamson County, and its residents have voluntarily restricted their activities to degrees far more protective than an added layer of regulation under the Act

would achieve. The Texas Commission on Environmental Quality's Edwards Aquifer rules were enacted to prevent water quality degradation within the Edwards Aquifer where the salamanders reside. Those rules require, among other things, that any construction-related activity occurring over the Edwards Aquifer must first prepare detailed studies and reports and then employ certain best management practices to prevent pollution of the surface water and groundwater. The Georgetown water quality ordinance heavily restricts activity in a tiered structure within 262-ft (80-m) and 984-ft (300-m) of salamander occupied springs. The City of Georgetown's water quality ordinance provides protections that exceed what would be achieved by the proposed critical habitat, but without the additional regulatory layer and associated delays and costs that would result from a critical habitat designation. The Georgetown water quality ordinance has been strictly implemented, and the success of such efforts is evidenced by the monitoring results voluntarily undertaken by the Williamson County Conservation Foundation. Further, numerous other voluntary conservation actions are in place to address the surface and subsurface concerns identified in the September 15, 2020, proposed rule. These actions demonstrate that significant and existing conservation efforts exceed the protections that would otherwise be afforded by a critical habitat designation. A critical habitat designation would not further the conservation of the species, but it would add significant regulatory processes resulting in project delays and increased costs.

Our Response: See our response to *Comment 13*. Again, we appreciate and acknowledge all the hard work conservation partners and residents have voluntarily undertaken to help conserve both species of salamander. However, we have concluded that critical habitat is prudent for Georgetown salamander and Salado salamander (85 FR 57578). In the final listing rule, we identified destruction, modification, or curtailment of habitat or range as threats to the species and include increases in impervious cover and infrastructure (e.g., roadways and sewage lines) that accompany urbanization and degrade water quality, quarrying that may damage subterranean habitat, and installation of impoundments that alter surface habitat. These threats can be addressed under section 7(a)(2) of the Act.

The buffer zones described in the City of Georgetown's ordinance lessen the

potential for further water quality degradation, but they do not remove the threat posed by existing development. Buffer zones also do not address threats to water quantity. The threat of chemical spills from existing highways, sewer lines, and septic systems still exists. We acknowledge that some Georgetown salamander, and now Salado salamander, sites in Williamson County have been monitored since 2008. However, only a small number of sites occupied by those salamanders have been regularly monitored for water quality and salamander abundance. Data are lacking for many springs occupied by the Georgetown salamander as well as additional sites for the Salado salamander. Available monitoring data do not reflect the potential for individual site variation or depict the range of landscape or habitat conditions (e.g., degree of urbanization or age of development) within which the occupied springs occur.

Comment 15: One commenter stated that the Service should explain how special management may be required for the biological and physical features when describing each proposed critical habitat unit. Courts have interpreted the special management provision to mean that the Service must provide an analysis explaining how the biological and physical features in the proposed critical habitat area may require special management.

Our Response: On the contrary, in *Arizona Cattle Growers Association v. Kempthorne*, the courts stated that “. . . the statute does not require anything more than a finding that the physical and biological features themselves . . . may require special management.” and the Service “. . . has fulfilled its lone requirement . . .” by making such a finding that an area(s) *may* require special management (534 F. Supp. 2d. 1013, 1031, D. Ariz. 2008). The court made clear in its finding that the Service needs to look at whether the physical or biological features may require special management considerations. Each unit description identifies the physical or biological features in the unit and identifies which special management considerations or protections may be needed for that unit, fulfilling this requirement. Please see unit descriptions and Special Management Considerations or Protections, below, for a description of the management needs of the physical or biological features.

Comment 16: Some commenters requested that the final rule address the effects to the Georgetown and Salado salamanders from nitrates, as we have done in past rules (77 FR 50768; 79 FR

10236), because salamanders might be experiencing impairments to their respiratory, metabolic, and feeding capabilities as a result of high nitrate concentrations.

Our Response: Nutrient input, such as nitrogen, may affect the aquatic habitats inhabited by the Georgetown and Salado salamanders (Gomez et al. 2020, entire). Nitrate, ammonia, total dissolved solids, and total suspended solids can increase in watersheds that encompass residential development, golf courses, and other human activities. The February 24, 2014, final rule listing the Georgetown and Salado salamanders as threatened species (79 FR 10236) reviewed the potential impacts of nitrates on amphibians and noted higher levels of this substance at some salamander locations. At this time, we lack sufficient information to specifically detail a range of nitrate levels that may affect Georgetown and Salado salamanders, and we therefore do not describe them under Physical or Biological Features Essential to the Conservation of the Species in this rule.

Comment 17: In the September 15, 2020, proposed rule, the Service cited a single paper (Pierce et al. 2010) that primarily reports one year of water quality data at Swinbank Spring. Water quality data pertinent to these species can also be found in additional peer-reviewed, published manuscripts as well as numerous reports. These collective reports and publications identify a much wider range of appropriate water conditions than included in the September 15, 2020, proposed rule. The Service did not rely on the best available scientific information when defining water conditions that are essential to the conservation of the two species. One commenter stated that our analysis of the negative effects of elevated water conductance on the Georgetown and Salado salamanders was flawed because we based our analysis on research conducted on the Jollyville Plateau salamander. Pierce et al. (2010, p. 294) studied a different species of salamander with different habitat requirements and did not indicate that conductance of 604 to 721 micro-Siemens per centimeter ($\mu\text{S}/\text{cm}$) was an essential requirement for the Georgetown salamander, as the Service stated in the proposed rule.

Our Response: Based on comments, scientific research, and water quality monitoring data, we have updated text in this final rule regarding water quality parameters to include temperature, dissolved oxygen, and specific conductance. See Physical or Biological Features Essential to the Conservation of

the Species, below, for more information.

Comment 18: Some commenters stated that our economic analysis did not accurately capture impacts to tourism or development in Bell and Williamson counties. Commenters stated that the Village of Salado relies on the tourism industry and receives approximately 75,000 visitors per year, or 30 times the number of people living in Salado and believed there is serious potential for this industry to be negatively impacted by the proposed designation. In addition, development in surrounding areas may experience increased restrictions and negative impacts to property values. The designation of critical habitat may also cause delays in public safety and education projects. For example, if a bridge is not up to standards, and the bridge's new construction is tied to Federal nexus funding, then there will be additional costs and delays from section 7 consultation. Commenters anticipate the impact to Bell and Williamson Counties to be a much larger estimate than the described \$38,500 per year.

The commenters stated that the draft economic analysis' estimate of \$38,500 per year conclusion did not to acknowledge the stigma that arises when an area is designated as critical habitat. As acknowledged by the Fifth Circuit, a critical habitat designation creates an economic stigma that affects property values, even where the designation affects non-Federal lands and does not presently have a Federal nexus. This cost is not mentioned or captured anywhere in the September 15, 2020, proposed rule. Where there is a Federal nexus, the designation of critical habitat can trigger formal consultation where consultation could otherwise be avoided through the implementation of best management practices. Further, critical habitat can prompt a formal consultation where informal consultation would otherwise be appropriate. Consultation, itself, imposes costs and takes time, and a critical habitat designation adds another layer of analysis. In some instances, the Service seeks additional conservation or restoration measures based on adverse modification. All of these processes, measures, and delays can have significant costs to a project proponent.

Our Response: We revised the economic analysis based on several comments; the final economic analysis is available at <http://www.regulations.gov> under Docket No. FWS-R2-ES-2020-0048. As directed by the Act, we proposed as critical habitat those areas occupied by the species at

the time of listing and that contain the physical or biological features essential to the conservation of the species, which may require special management considerations or protection. Section 3 of the economic analysis outlines the substantial baseline protections currently afforded the Georgetown and Salado salamanders throughout the proposed designation (IEc 2021, p. 7). These baseline protections result from the listing of the Georgetown and Salado salamanders under the Act. As a result of these protections, the economic analysis concludes that incremental impacts associated with section 7 consultations for the Georgetown and Salado salamanders is likely limited to additional administrative effort. The analysis forecasts future section 7 consultation activity based on consultations for the Georgetown and Salado salamanders that have occurred since its listing in 2014. Using these historical consultation rates and applying estimated consultation costs presented in Exhibit 3 of the analysis (IEc 2021, p. 11), we expect that the additional administrative costs incurred by critical habitat designation will not exceed \$38,500 in a given year.

The Service anticipates conservation measures provided to address impacts to occupied critical habitat areas will be the same as those recommended to address impacts to the species because the habitat requirements of the Georgetown and Salado salamanders are closely linked to the survival, growth, and reproduction of these species, which are present year-round in their spring, stream, cave, and subterranean habitats. As such, the economic analysis of the critical habitat designation does not anticipate that the designation will result in new conservation efforts for the species that would not already occur due to the listing of the species in designated critical habitat areas. Therefore, critical habitat designation for the Georgetown and Salado salamanders is not anticipated to result in additional costs for development or other infrastructure projects other than administrative costs to address critical habitat in section 7 consultations. We also updated our economic analysis to further elaborate on this topic (IEc 2021).

The Act does not authorize the Service to regulate private actions on private lands. Critical habitat designation also does not establish specific land management standards or prescriptions, although Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. Critical habitat receives

protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Most of the costs identified by the commenter are costs that are a result of the listing of the Georgetown and Salado salamanders and are not attributable to the designation of critical habitat for the species. The economic analysis acknowledges that the two counties in which the critical habitat designation spans are experiencing significant development pressure. The Service anticipates conservation recommendations provided to address impacts to the occupied critical habitat will be the same as those recommended to address impacts to the species because the habitat requirements of the Georgetown and Salado salamanders are closely linked to the survival, growth, and reproduction of these species, which are present year-round in their spring, stream, cave, and subterranean habitats. As such, the economic analysis of critical habitat designation does not anticipate that the designation will result in new conservation efforts for the species that would not already occur due to the listing of the species in designated critical habitat areas. As such, this critical habitat designation for the Georgetown and Salado salamanders is not anticipated to result in additional restrictions or requirements for development or other infrastructure projects. Therefore, critical habitat designation for the Georgetown and Salado salamanders is not anticipated to result in additional costs for development or other infrastructure

projects other than administrative costs to address critical habitat in section 7 consultations.

Comment 19: One commenter believed that our reclassification of five spring sites previously considered to be Georgetown salamanders as Salado salamander sites results in economic impacts due to the resulting changes in application of the 4(d) rule for the Georgetown salamander, which incorporates the City of Georgetown's water quality ordinance. This revision means that members of the regulated community that have previously relied on the 4(d) rule and ordinance are now exposed to potential section 9 violations.

Our Response: The costs identified by the commenter are costs that are a result of the listing and 4(d) rule for the Georgetown and Salado salamanders and are not attributable to the designation of critical habitat for the species. This critical habitat designation in no way changes the 4(d) rule for the Georgetown salamander referenced by the commenter.

Comment 20: Williamson County Conservation Foundation commented that the Service did not conduct an exclusion analysis consistent with its authority under the Act's section 4(b)(2). The broadly drawn proposed critical habitat units confer little benefit to the species at great detriment to the County and its residents. The existing protections provide significant upside to both the species and the County's residents, while the September 15, 2020, proposed rule would yield significant downsides and little, if any, benefit to the two species. The benefits of excluding the proposed critical habitat areas far outweigh the benefits of inclusion. The Service should redo its economic analysis considering the myriad of impacts discussed above and conduct an exclusion analysis.

Our Response: For exclusion of an area from critical habitat designation based on management, we look to our Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act (81 FR 7226; February 11, 2016) that outlines measures we consider when excluding any areas from critical habitat. Although we published revised regulations that address section 4(b)(2) on December 18, 2020 (85 FR 82376), the revised regulation applies to critical habitat rules for which a proposed rule is published after January 19, 2021. The proposed rule for the Georgetown and Salado salamanders published on September 15, 2020. Therefore, this rule is grandfathered from the December 18, 2020 regulation.

The Service considers six elements when considering whether to exclude any areas from critical habitat: (1) Partnerships and conservation plans; (2) conservation plans permitted under section 10 of the Act; (3) national security and homeland security impacts, and military lands; (4) Tribal lands; (5) Federal lands; and (6) economic impacts. We did not receive any request for exclusion of any specific critical habitat units in Williamson County and the Williamson County Conservation Foundation. No permitted plans under section 10 of the Act exist within the county, we are not aware of any impacts to national security or homeland security, and the designation does not include Tribal or Federal lands within the county. The partnerships and voluntary conservation plans cited by the Foundation do not remove the threat posed by existing development or the threat of chemical spills from existing highways, sewer lines, and septic systems. The human population in Williamson County is projected to increase by 161 percent, between 2022 and 2050 (Texas Demographic Center 2021). The associated increase in urbanization is likely to result in continued impacts to water quality that require special management of the habitat to address. Therefore, we did not conduct a weighing analysis to determine whether the benefits of exclusion outweigh the benefits of inclusion for other areas. Please see Exclusions, below, for a discussion of the areas we are excluding from the final designation.

Finally, the Service updated its economics analysis (IEc 2021, entire) based on public comment provided during the comment period associated with the proposed critical habitat destination (85 FR 57578).

Comment 21: One commenter stated that the September 15, 2020, proposed rule did not properly follow the process by which the Secretary should take into account economic and other impacts and exclude areas from critical habitat if she determines that the benefits of exclusion outweigh the benefits of inclusion.

Our Response: Our regulations state that "The Secretary will make a final designation of critical habitat based on the best scientific data available, after taking into consideration the probable economic, national security, and other relevant impacts of making such a designation in accordance with § 424.19" (50 CFR 424.12(a)). In accordance with 50 CFR 424.19, "The Secretary has the discretion to exclude any particular area from critical habitat upon a determination that the benefits

of such exclusion outweigh the benefits of specifying the particular area as part of the critical habitat." It is the Service's practice to propose all lands that meet the definition of critical habitat and determine whether any lands should then be excluded under Section 4(b)(2) of the Act in the final rule. We received further information during the public comment period on the September 15, 2020, proposed rule, and after conducting a weighing analysis, we are excluding Salado salamander units 1, 2, and 3 from critical habitat designation in this rule. Please see Exclusions, below, for a discussion of the areas we are excluding from the final designation.

Comment 22: One commenter disagreed with the methodology in the draft economic analysis to limit the assessment of economic impacts to those solely attributable to the critical habitat designation (*i.e.*, the baseline approach). They opined that the Service's use of the baseline approach is not only illegal, it prejudices landowners affected by the designation, as it significantly understates the designation's economic impact and ignores the cumulative impact of adding the designation's costs to those that landowners already bear because of the salamanders' listing. The commenter believed that we should analyze all of the economic impacts of a critical habitat designation, regardless of whether those impacts are attributable co-extensively to other causes, such as listing the species. The commenter further opined that the Service should conduct a new economic analysis, using the co-extensive approach.

Our Response: Because the primary purposes of the economic analysis are to facilitate the mandatory consideration of the economic impact of the designation of critical habitat, to inform the discretionary section 4(b)(2) exclusion analysis, and to determine compliance with relevant statutes and Executive Orders, the economic analysis focuses on the incremental impact of the designation. The economic analysis of the designation of critical habitat for the Georgetown and Salado salamanders follows this incremental approach. The Service acknowledges that significant debate has occurred regarding whether assessing the impact of critical habitat designations using the incremental approach is appropriate, with several courts issuing divergent opinions. Most recently, the U.S. Ninth Circuit Court of Appeals concluded that the incremental approach is appropriate, and the U.S. Supreme Court declined to hear the case (*Home Builders Association of Northern California v. United States Fish and Wildlife Service*, 616 F.3d 983 (9th Cir.

2010), cert. denied, 179 L. Ed 2d 301, 2011 U.S. Lexis 1392, 79 U.S.L.W. 3475 (2011); *Arizona Cattle Growers v. Salazar*, 606 F.3d 1160 (9th Cir. 2010), cert. denied, 179 L. Ed. 2d 300, 2011 U.S. Lexis 1362, 79 U.S. L.W. 3475 (2011)). Subsequently, on August 28, 2013, the Service published a final rule (78 FR 53058) revising our regulations pertaining to impact analyses conducted for designations of critical habitat under the Act; the regulations specify that the incremental approach should be used (see p. 78 FR 53062 and 50 CFR 424.19(b)). We updated our final economic analysis for this critical habitat designation to further clarify these points (IEc 2021).

Section 4(b)(1)(A) of the Act states that the Secretary shall make listing determinations “solely on the basis of the best scientific and commercial data available,” which prevents the Service from factoring in economic considerations when making a listing determination. However, with regard to designating critical habitat, and specific to designating critical habitat, section 4(b)(2) of the Act states that the Secretary shall designate and revise critical habitat on the basis of the best scientific data available and after taking into consideration “the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat.” The incremental approach, or “baseline approach,” is in accord with the language and intent of the Act. The regulations at 50 CFR 424.19(b) state that the Secretary will consider impacts at a scale that the Secretary determines to be appropriate and will compare the impacts with and without the designation. The incremental approach (baseline approach) compares the impacts with and without designating the critical habitat, as opposed to with or without a listing determination. We have concluded that an incremental approach is consistent with the Act and with the Office of Management and Budget (OMB) guidance and is the most logical way of analyzing impacts. Lastly, the Service considered the economic impacts of the designation of critical habitat in its economics analysis summarized in an updated memorandum dated April 13, 2021, which is available at <http://www.regulations.gov> at Docket No. FWS-R2-ES-2020-0048.

Comment 23: One commenter stated that our economic analysis is deficient because it failed to adequately measure reductions in the value of private property, did not consider the costs likely to be incurred by landowners in avoiding or defending against citizen

lawsuits to enforce other provisions of the Act, and ignored incremental costs attributable to the avoidance of adversely modifying the salamanders’ habitat. The commenter recommended that we: (1) Analyze or quantify how public perception of the critical habitat designation will affect private property values within the designation; (2) analyze the costs that may be incurred by landowners in avoiding and defending against citizen lawsuits pursuant to section 11 of the Act from environmental groups or neighbors alleging violations of the Act’s section 9 prohibition on take; and (3) correct the proposed rule’s erroneous assumption that any adverse modification of habitat would necessarily jeopardize the species.

Our Response: First, the costs of litigation pursuant to section 11 citizen suit provisions alleging that a section 9 violation has occurred are not attributable to the designation of critical habitat. The Act does not contain any section 9 protections for critical habitat. Secondly, as stated in the economic screening analysis memorandum, the Service recognizes that, under certain circumstances, critical habitat designations may affect private property values. The memorandum describes that public attitudes about the limits and costs that the Act may impose can cause real economic effects to the owners of property, regardless of whether such limits are actually imposed. This effect is sometimes referred to as a stigma effect. Over time, as public awareness grows of the regulatory burden placed on designated lands, the effect of critical habitat designation on properties may subside. Because the economics literature on the subject is limited and is species- and site-specific in nature, the likelihood and potential magnitude of property value effects due to critical habitat designation for the salamanders is uncertain. Lastly, and consistent with this comment, the final economics screening memorandum clarifies that the Georgetown salamander 4(d) rule at 50 CFR 17.43(e) exempts the incidental take of Georgetown salamander if the take occurs on non-Federal land from regulated activities that are conducted consistent with the water quality protection measures contained in the City of Georgetown (Texas) Unified Development Code (UDC), as endorsed by the Service. As the 4(d) rule serves to reduce regulatory uncertainty for these development activities, perceptual effects on land values may be less likely to occur on these lands.

Comment 24: One commenter stated that we should conduct a NEPA analysis in conjunction with the proposed

designation of critical habitat for the Georgetown and Salado salamanders, citing various case law in support of their assertion. The commenter recommended that the Service prepare an environmental assessment in conjunction with the critical habitat designation.

Our Response: It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to NEPA in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). This critical habitat designation is outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit.

Comment 25: A commenter stated that the Service has not prepared an initial regulatory flexibility analysis for the proposed critical habitat designation as required by the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*). The RFA requires that, whenever an agency publishes a general notice of proposed rulemaking, as it has done here, it must also “prepare and make available for public comment” an “initial regulatory flexibility analysis.” Thus, the commenter recommended that the Service reissue the September 15, 2020, proposed rule, after preparing the required initial regulatory flexibility analysis and conduct a final regulatory flexibility analysis prior to finalizing the designation.

Our Response: Under the RFA, Federal agencies are only required to evaluate the potential incremental impacts of a rulemaking on directly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried by the agency is not likely to adversely modify critical habitat. Therefore, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Under these circumstances, it is the Service’s position that only Federal action agencies will be directly regulated by this designation. Therefore, because Federal agencies are not small entities, the Service may certify that this critical

habitat designation will not have a significant economic impact on a substantial number of small entities. Because certification is possible, no regulatory flexibility analysis is required.

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.*, range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.*, migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other

conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement "reasonable and prudent alternatives" to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) Which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features within an area, we focus on the specific features that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Under the second prong of the Act's definition of critical habitat, we may designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. The implementing regulations at 50 CFR 424.12(b)(2) further delineate

unoccupied critical habitat by setting out three specific parameters: (1) When designating critical habitat, the Secretary will first evaluate areas occupied by the species; (2) the Secretary will only consider unoccupied areas to be essential where a critical habitat designation limited to geographical areas occupied by the species would be inadequate to ensure the conservation of the species; and (3) for an unoccupied area to be considered essential, the Secretary must determine that there is a reasonable certainty both that the area will contribute to the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Our Policy on Information Standards under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for

recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in section 9 of the Act. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of the species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, HCPs, or other species conservation planning efforts if new information available at the time of those planning efforts calls for a different outcome.

Prudence and Determinability

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. In our proposed critical habitat rule (85 FR 57578; September 15, 2020), we found that designating critical habitat is both prudent and determinable for the Georgetown and Salado salamanders. In this final rule, we reaffirm those determinations.

Physical or Biological Features Essential to the Conservation of the Species

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection. The regulations at 50 CFR 424.02 define “physical or biological features essential to the conservation of the species” as the features that occur in specific areas and that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey,

vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkaline soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, we may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

Based on public comment, we separated the summary of essential physical or biological features (formerly primary constituent elements) for these salamander species into surface and subsurface habitat categories and added additional details in order to clarify habitat needs of both species. We derive the specific physical or biological features essential to the conservation of the Georgetown and Salado salamanders from studies of the species’ habitat, ecology, and life history as described in the August 22, 2012, proposed rule (77 FR 50768), and in the information presented below. Additional information can be found in the final listing rule for the Georgetown and Salado salamanders (79 FR 10236; February 24, 2014).

Observational and experimental studies on the habitat requirements of Georgetown and Salado salamanders are rare. In the field of aquatic ecotoxicology, it is common practice to apply the results of experiments on common species to other species that are of direct interest (Caro et al. 2005, p. 1,823). In addition, the field of conservation biology is increasingly relying on information about surrogate species to predict how related species will respond to stressors (for example, see Caro et al. 2005 pp. 1,821–1,826; Wenger 2008, p. 1,565). In instances where information was not available for the Georgetown and Salado salamander specifically, we have provided references for studies conducted on similarly related species that inhabit the same or nearby segments of the Edwards Aquifer, such as the Jollyville Plateau salamander (*i.e.*, Northern Segment) and Barton Springs salamander (Barton Springs Segment; *Eurycea sosorum*), which occur within the central Texas area, and other salamander species that occur in other parts of the United States. The similarities among these species may include: (1) A clear systematic (evolutionary) relationship (for example, members of the Family Plethodontidae); (2) shared life-history attributes (for example, the lack of metamorphosis into a terrestrial form); (3) similar morphology and physiology (for example, the lack of lungs for respiration and sensitivity to environmental conditions); (4) similar prey (for example, small invertebrate species); and (5) similar habitat and ecological requirements (for example, dependence on aquatic habitat in or near springs with a rocky or gravel substrate). Depending on the amount and variety of characteristics in which one salamander species can be analogous to another, we used these similarities as a basis to infer further parallels in what Georgetown and Salado salamanders require from their habitat. We have determined that the Georgetown and Salado salamanders require the physical or biological features described below.

Space for Individual and Population Growth and for Normal Behavior

Georgetown and Salado Salamanders

The Georgetown and Salado salamanders occur in wetted caves and where water emerges from the ground as a spring-fed stream. Within the spring ecosystem, salamanders’ proximity to the springhead is presumed important because of the appropriate stable water chemistry and temperature, substrate, and flow regime. In surface aquatic

habitats (e.g., spring opening and spring run), Georgetown and Salado salamanders are generally found within 66 ft (20 m) of a spring source (TPWD 2011, p. 3; Diaz et al 2015, p. 7). These salamanders appear to be most abundant within the first 16 ft (5 m) of a spring opening (Pierce et al. 2010, p. 294; Gutierrez et al. 2018, pp. 386–388; Pierce et al. 2014, pp. 139–140, 141–142). However, some researchers have noted results of their mark-recapture efforts are most applicable to large juvenile and adult Georgetown and Salado salamanders, and may not accurately depict the movement of larvae (Gutierrez et al., pp. 387–388).

Georgetown and Salado salamanders have been regularly observed, in reduced numbers, at distances greater than 66 ft (20 m) from spring openings (Pierce 2016, p. 13; Pierce 2017, p. 14, 17, 19; Gutierrez et al. 2018, p. 386). Some individual salamanders have been found up to 194 ft (59 m) from a spring opening (Pierce et al. 2011a, p. 4; Pierce 2015, p. 13; Pierce 2016, pp. 14, 17, 19; Gutierrez et al. p. 386). Gravid (i.e., egg-bearing) Georgetown and Salado salamanders have been noted as moving more often and to greater distances than non-gravid individuals (Pierce 2015, pp. 7–8; Gutierrez et al. 2018, pp. 385–386). Some researchers have indicated that areas downstream from spring openings may be important for salamander reproduction (Pierce 2015, pp. 7–8; Gutierrez et al. 2018, pp. 387–388). Jollyville Plateau salamander small juveniles were most abundant downstream from spring openings, with most of these individuals occurring at a distance of approximately 197–262 ft (60–80 m) from spring outlets (Bendik et al. 2016, pp. 9–10, 16).

The Jollyville Plateau salamander has been found up to 262 ft (80 m) both upstream and downstream from a spring outlet (Bendik et al. 2016, p. 9). That salamander species, along with the Georgetown and Salado salamanders, comprise a closely related subgenus, *Septentriomolge*, occurring in the Northern Segment of the Edwards Aquifer (Hillis et al. 2001, pp. 275, 277; Devitt et al. 2019, pp. 2626–2628). Members of the *Eurycea* subgenus can travel greater distances from a discrete spring opening than previously thought, including upstream areas (Bendik et al. 2016, p. 9). Therefore, we presume that the Georgetown and Salado salamanders may move a comparable distance and that aquatic habitat away from spring openings is potentially important to salamander reproduction.

Georgetown and Salado salamanders likely use the subterranean aquifer for habitat throughout the year, similar to

other *Eurycea* species (Bendik and Gluesenkamp 2012, pp. 4–5; Bendik et al. 2013, pp. 10–12, 15; Bendik 2017, p. 5,013; Diaz and Bronson-Warren 2018, p. 11; Devitt et al. 2019a, p. 2,625). Morphological forms of Georgetown salamander with cave adaptations have been found at two caves (TPWD 2011, p. 8), indicating that they spend all of their lives underground at these two locations. We assume that the Salado salamander also uses subsurface areas given recruitment of individuals to the surface from the underlying aquifer, with surface recruitment at one occupied spring opening in Bell County estimated at 0.03 salamanders per day (Diaz and Bronson-Warren 2019, p. 7). Therefore, based on the information above, we identify springs, associated streams, and underground spaces within the Northern Segment of the Edwards Aquifer to be physical or biological features essential for individual and population growth and for normal behavior of the Georgetown and Salado salamanders.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Georgetown and Salado Salamanders

No species-specific dietary study has been completed, but the diet of the Georgetown salamander is presumed to be similar to other *Eurycea* species, consisting of small aquatic invertebrates such as amphipods, copepods, isopods, and insect larvae (reviewed in COA 2001, pp. 5–6). Crustaceans from the Class Ostracoda were the most commonly observed prey item for Salado salamanders (Diaz and Bronson-Warren 2018, pp. 8, 14). Other invertebrates consumed by the Salado salamander included amphipods, aquatic snails, and larvae of mayflies and caddisflies (Diaz and Bronson-Warren 2018, p. 14).

Georgetown and Salado salamanders are strictly aquatic and spend their entire lives submersed in water from the Northern Segment of the Edwards Aquifer (Pierce et al. 2010, p. 296; Diaz and Bronson-Warren 2019, p. 7). These salamanders, and the prey that they feed on, require water sourced from the Edwards Aquifer at sufficient flows (i.e., quantity) to meet all of their physiological requirements (TPWD 2011, p. 8). This water should be flowing and unchanged in chemistry, temperature, and volume from natural conditions. Currently, only a limited subset of springs inhabited by Georgetown and Salado salamanders have been assessed for water quality. Research at additional occupied spring

sites will aid in refining the range of suitable water quality parameters these salamanders depend upon. Our assessment of water quality parameters was restricted to a subset of relatively intact spring sites with available water quality data—specifically, Robertson Springs in Bell County and Cobbs, Cowan, King's Garden, Swinbank, and Twin Springs in Williamson County. The Salado salamander occurs at five (i.e., Robertson, Cobbs, Cowan, King's Garden, and Twin Springs) of these springs. The Georgetown salamander occupies Swinbank Spring. We presume that water quality parameters at these other sites are suitable for the Georgetown salamander as well given that species' co-occurrence in the Northern Segment of the Edwards Aquifer. These spring sites provide some degree of a representative sample as they lie along a roughly north to south line across that segment of the Edwards Aquifer, from southern Bell County to central Williamson County.

Water temperature recorded at the six springs referenced above averaged 69 degrees Fahrenheit (°F) (21 degrees Celsius (°C)) and ranged from 61 to 84 °F (16 to 29 °C) (Diaz et al. 2015, p. 10; Diaz et al. 2016, p. 14; Cambrian Environmental 2016, pp. 3, 5, 7; Cambrian Environmental 2017a, pp. 3, 5, 7; Cambrian Environmental 2017b, pp. 5, 8, 12; Diaz and Montagne 2017, p. 17; Cambrian Environmental 2018a, pp. 4, 9, 13; Cambrian Environmental 2018c, pp. 13–14; Cambrian Environmental 2019a, pp. 37–38; Cambrian Environmental 2019b, pp. 295–297, 329; Cambrian Environmental 2020, pp. 35–36). Concentrations of contaminants should be below levels that could exert direct lethal or sublethal effects (such as effects to reproduction, growth, development, or metabolic processes), or indirect effects (such as effects to the Georgetown and Salado salamanders' prey base).

Edwards Aquifer *Eurycea* species are adapted to a lower ideal range of oxygen saturations compared to other salamanders (Turner 2009, p. 11). However, *Eurycea* salamanders need dissolved oxygen concentrations to be above a certain threshold, as the related Barton Springs salamander demonstrates declining abundance with dissolved oxygen levels below 5 milligrams per liter (mg/L) (Turner 2004, pp. 5–7, 10; Turner 2009, pp. 12–15). In addition, dissolved oxygen concentrations below 4.5 mg/L resulted in a number of physiological effects in the related San Marcos salamander, including decreased metabolic rates and decreased juvenile growth rates (Woods et al. 2010, p. 544). Large-scale mortality

of a San Marcos salamander was expected if dissolved oxygen dropped below 3.4 mg/L for extended periods (*i.e.*, 25 days) (Woods et al. 2010, pp. 544, 549–551).

Lower dissolved oxygen values have been noted at sites inhabited by the Georgetown and Salado salamanders, with measured values as low as 1.5 mg/L (Cambrian Environmental 2018, p. 22). Reported impacts to Georgetown and/or Salado salamanders, in the presence of lower dissolved oxygen, are limited. One Georgetown salamander site (*i.e.*, Swinbank Spring) experienced a decrease in dissolved oxygen to 2.2 mg/L in June 2016, with levels rebounding in July 2016 to 6.4 mg/L (Cambrian Environmental 2017b, p. 8). No decline in numbers of salamanders was noted after that event (Cambrian Environmental 2017b, p. 22). Dissolved oxygen at that spring averaged 7.2 mg/L for the remainder of 2016 (Cambrian Environmental 2017b, p. 8). Conversely, Cobbs Spring, occupied by the Salado salamander, experienced a decrease in dissolved oxygen to 3.2 mg/L in February 2016, and remained below 4.0 mg/L into March 2016 (Cambrian Environmental 2016a, p. 13). That low dissolved oxygen event was followed by sharper declines in August 2016 to 1.5 mg/L with dissolved oxygen remaining below 4.0 mg/L through September 2016 (Cambrian Environmental 2018a, p. 13). Numbers of Salado salamanders observed at this spring declined after the latter event and remained low throughout 2017 (Cambrian Environmental 2018a, pp. 13, 42–43). Subsequently, numbers of Salado salamanders observed at this spring have increased (Cambrian Environmental 2020, p. 18).

Based on available water quality data, the six relatively intact springs in Bell and Williamson counties are generally characterized by average dissolved oxygen of 6.6 mg/L with recorded levels ranging from 1.5 to 13.3 mg/L (Diaz et al. 2015, p. 10; Diaz et al. 2016, p. 14; Cambrian Environmental 2016, pp. 3, 5, 7; Cambrian Environmental 2017a, pp. 3, 5, 7; Cambrian Environmental 2017b, pp. 5, 8, 12; Diaz and Montagne 2017, p. 17; Cambrian Environmental 2018a, pp. 4, 9, 13; Cambrian Environmental 2018c, pp. 13–14; Cambrian Environmental 2019a, pp. 37–38; Cambrian Environmental 2019b, pp. 295–297, 329; Cambrian Environmental 2020, pp. 35–36). Dissolved oxygen below 4.5 mg/L appears to have some impact on Salado salamander abundance. This is consistent with observed effects on the Barton Springs and San Marcos salamanders (Turner 2004, pp. 5–7, 10; Turner 2009, pp. 12–

15; Woods et al. 2010, pp. 544, 549–551). Woods et al. (2010, p. 540) states that an ambient concentration of dissolved oxygen of 5.0 mg/L appears adequate to sustain *Eurycea* salamanders. Therefore, we presume that dissolved oxygen in the range of 5.0 to 13.0 mg/L is important to the Georgetown and Salado salamanders for respiratory function. Research is needed to better define the physiological tolerances of the Georgetown and Salado salamanders to low dissolved oxygen.

The conductivity of water is also important to salamander physiology. Increased conductivity is associated with increased water contamination and decreased *Eurycea* abundance (Willson and Dorcas 2003, pp. 766–768; Bowles et al. 2006, pp. 117–118). The lower limit of observed conductivity in developed Jollyville Plateau salamander sites where salamander densities were lower than undeveloped sites was 800 micro Siemens per centimeter ($\mu\text{S}/\text{cm}$) (Bowles et al. 2006, p. 117). Salamanders were significantly more abundant at undeveloped sites where water conductivity averaged 600 $\mu\text{S}/\text{cm}$ (Bowles et al. 2006, p. 117). Because of their similar physiology to the Jollyville Plateau salamander, we presume that the Georgetown and Salado salamanders will have a similar response to elevated water conductance (*i.e.*, specific conductance). Water conductance at six relatively intact salamander sites averaged 671 $\mu\text{S}/\text{cm}$ and ranged from 317 to 814 $\mu\text{S}/\text{cm}$ (Diaz et al. 2015, p. 10; Diaz et al. 2016, p. 14; Cambrian Environmental 2016, pp. 3, 5, 7; Cambrian Environmental 2017a, pp. 3, 5, 7; Cambrian Environmental 2017b, pp. 5, 8, 12; Diaz and Montagne 2017, p. 17; Cambrian Environmental 2018a, pp. 4, 9, 13; Cambrian Environmental 2018c, pp. 13–14; Cambrian Environmental 2019a, pp. 37–38; Cambrian Environmental 2019b, pp. 295–297, 329; Cambrian Environmental 2020, pp. 35–36). Although one laboratory study on the related San Marcos salamander demonstrated that conductivities up to 2,738 $\mu\text{S}/\text{cm}$ had no measurable effect on adult activity (Woods and Poteet 2006, p. 5), it remains unclear how elevated water conductance might affect juveniles or the long-term health of salamanders in the wild. Bowles et al. (2006, pp. 117–118) documented lower densities of the Jollyville Plateau salamander at sites with higher amounts of human development and high specific conductance (*i.e.*, average of 917 $\mu\text{S}/\text{cm}$). Greater densities of that salamander were observed in

undeveloped (*i.e.*, less than 10 percent impervious cover) sites with lower specific conductance (593 $\mu\text{S}/\text{cm}$) (Bowles et al. 2006, pp. 117–118). Higher specific conductance at developed sites was attributed to the presence of contaminants from roadway runoff, wastewater leakage, and fertilizer use (Bowles et al. 2016, pp. 118–119). A more recent assessment of contaminants uptake in the Georgetown, Jollyville Plateau, and Salado salamanders found higher amounts of contaminants (*e.g.*, organochlorines and polycyclic aromatic hydrocarbons) at more heavily developed sites (*i.e.*, greater than 10 percent impervious cover) and in the tissues of the salamanders themselves (Diaz et al. 2020, pp. 291–294). In that study, specific conductance of developed sites averaged 798 $\mu\text{S}/\text{cm}$, whereas sites with little to no impervious cover averaged 684 $\mu\text{S}/\text{cm}$ (Diaz et al. 2020, Table S5). In the absence of better information on the sensitivity of salamanders to changes in conductivity (or other contaminants) in the wild, it is reasonable to presume that salamander survival, growth, and reproduction will be most successful when water quality is unaltered from natural aquifer conditions.

Therefore, based on the information above, we identify aquatic invertebrates and water from the Northern Segment of the Edwards Aquifer, including adequate dissolved oxygen concentration of 5.0 to 13.0 mg/L, water conductance of 317 to 814 $\mu\text{S}/\text{cm}$, and water temperature of 61 to 84 °F (16 to 29 °C), to be physical or biological features essential for the nutritional and physiological requirements of the Georgetown and Salado salamanders.

Cover or Shelter

Similar to other *Eurycea* salamanders in central Texas, Georgetown and Salado salamanders move an unknown depth into the interstitial spaces (empty voids between rocks) within the substrate, using these spaces for foraging habitat and cover from predators (Cole 1995, p. 24; Pierce and Wall 2011, pp. 16–17; Jones et al. 2020, pp. 291–292). These spaces should have minimal sediment, as sediment fills interstitial spaces, eliminating resting places and reducing habitat of the prey base (small aquatic invertebrates) (O'Donnell et al. 2006, p. 34).

Georgetown and Salado salamanders have been observed under rocks, leaf litter, woody debris, and other cover objects (Pierce et al. 2010, p. 295; Diaz and Montagne 2017, p. 10; Diaz and Bronson-Warren, 2019, p. 7). Georgetown salamanders appear to

prefer large rocks over other cover objects (Pierce et al. 2010, p. 295), which is consistent with other studies on *Eurycea* habitat (Bowles et al. 2006, pp. 114, 116). Larger rocks provide more suitable interstitial spaces for foraging and cover. Other studies have noted greater detection of Salado salamanders in gravels, although cobble is occupied as well (Diaz and Montagne 2017, p. 10; Diaz and Bronson-Warren, 2019, p. 7).

If springs stop flowing and the surface habitat dries up, Jollyville Plateau salamanders recede with the water table and persist in groundwater refugia until surface flow returns (Bendik 2011a, p. 31). Access to refugia allows populations some resiliency against drought events. Due to the similar life history and habitats of the Georgetown and Salado salamanders, we presume that access to subsurface refugia for shelter during drought is also important for these salamanders.

Therefore, based on the information above, we identify rocky substrate, consisting of boulder, cobble, and gravel, with interstitial spaces that have minimal sediment, and access to the subsurface groundwater table to be physical or biological features essential for the cover and shelter for these species.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

Little is known about the reproductive habits of these species in the wild. However, the Georgetown and Salado salamanders are fully aquatic, spending all of their life cycles in aquifer and spring waters. Eggs of central Texas *Eurycea* species are rarely seen on the surface, so it is widely assumed that eggs are laid underground (Gluesenkamp 2011a, TPWD, pers. comm.; Bendik 2011b, COA, pers. comm.).

Therefore, based on the information above, we identify access to subsurface or subterranean, water-filled voids of varying sizes (e.g., caves, conduits, fractures, and interstitial spaces) to be a physical or biological feature essential for breeding and reproduction for this species.

Summary of Essential Physical or Biological Features for the Georgetown and Salado Salamanders

We derive the specific physical or biological features essential for the Georgetown and Salado salamanders from studies of these species' habitat, ecology, and life history, as described above. We have determined that the following physical or biological features are essential to the conservation of the Georgetown and Salado salamanders:

Georgetown Salamander

(1) For surface habitat:

(A) *Water from the Northern Segment of the Edwards Aquifer.* Groundwater issuing to the surface from the underlying aquifer is similar to natural aquifer conditions as it discharges from natural spring outlets. Concentrations of water quality constituents and contaminants should be below levels that could exert direct lethal or sublethal effects (such as effects to reproduction, growth, development, or metabolic processes), or indirect effects (such as effects to the Georgetown salamander's prey base). Hydrologic regimes similar to the historical pattern of the specific sites are present, with at least some surface flow during the year. The water chemistry of aquatic surface habitats is similar to natural aquifer conditions, with temperatures from 61 to 84 °F (16 to 29 °C), dissolved oxygen concentrations from 5 to 13 mg/L, and specific water conductance from 317 to 814 µS/cm.

(B) *Rocky substrate with interstitial spaces.* Rocks in the substrate of the salamander's surface aquatic habitat are large enough to provide salamanders with cover, shelter, and foraging habitat. The substrate and interstitial spaces have minimal sedimentation.

(C) *Aquatic invertebrates for food.* The spring environment supports a diverse aquatic invertebrate community that includes crustaceans, insects, and aquatic snails.

(D) *Subterranean aquifer.* Access to the subsurface water table exists to provide shelter, protection, and space for reproduction. This access can occur in the form of large conduits that carry water to the spring outlet or porous voids between rocks in the streambed that extend down into the water table.

(2) For subsurface habitat:

(A) *Water from the Northern Segment of the Edwards Aquifer.* Groundwater quality is similar to natural aquifer conditions. Concentrations of water quality constituents and contaminants should be below levels that could exert direct lethal or sublethal effects (such as effects to reproduction, growth, development, or metabolic processes), or indirect effects (such as effects to the Georgetown salamander's prey base). Hydrologic regimes similar to the historical pattern of the specific sites are present, with continuous flow. The water chemistry is similar to natural aquifer conditions, with temperatures from 61 to 84 °F (16 to 29 °C), dissolved oxygen concentrations from 5 to 13 mg/L, and specific water conductance from 317 to 814 µS/cm.

(B) *Subsurface spaces.* Voids between rocks underground are large enough to

provide salamanders with cover, shelter, and foraging habitat. These spaces have minimal sedimentation.

(C) *Aquatic invertebrates for food.* The habitat supports an aquatic invertebrate community that includes crustaceans, insects, and aquatic snails.

Salado Salamander

(1) For surface habitat:

(A) *Water from the Northern Segment of the Edwards Aquifer.* Groundwater quality issuing to the surface from the underlying aquifer is similar to natural aquifer conditions as it discharges from natural spring outlets. Concentrations of water quality constituents and contaminants are below levels that could exert direct lethal or sublethal effects (such as effects to reproduction, growth, development, or metabolic processes), or indirect effects (such as effects to the Salado salamander's prey base). Hydrologic regimes similar to the historical pattern of the specific sites are present, with at least some surface flow during the year. The water chemistry of aquatic surface habitats is similar to natural aquifer conditions, with temperatures from 61 to 84 °F (16 to 29 °C), dissolved oxygen concentrations from 5 to 13 mg/L, and specific water conductance from 317 to 814 µS/cm.

(B) *Rocky substrate with interstitial spaces.* Rocks in the substrate of the salamander's surface aquatic habitat are large enough to provide salamanders with cover, shelter, and foraging habitat. The substrate and interstitial spaces have minimal sedimentation.

(C) *Aquatic invertebrates for food.* The spring environment is capable of supporting a diverse aquatic invertebrate community that includes crustaceans, insects, and aquatic snails.

(D) *Subterranean aquifer.* Access to the subsurface water table exists to provide shelter, protection, and space for reproduction. This access can occur in the form of large conduits that carry water to the spring outlet or porous voids between rocks in the streambed that extend down into the water table.

(2) For subsurface habitat:

(A) *Water from the Northern Segment of the Edwards Aquifer.* Groundwater quality is similar to natural aquifer conditions. Concentrations of water quality constituents and contaminants are below levels that could exert direct lethal or sublethal effects (such as effects to reproduction, growth, development, or metabolic processes), or indirect effects (such as effects to the Salado salamander's prey base). Hydrologic regimes similar to the historical pattern of the specific sites are present, with continuous flow. The water chemistry is similar to natural

aquifer conditions, with temperatures from 61 to 84 °F (16 to 29 °C), dissolved oxygen concentrations from 5 to 13 mg/L, and specific water conductance from 317 to 814 µS/cm.

(B) *Subsurface spaces*. Voids between rocks underground are large enough to provide salamanders with cover, shelter, and foraging habitat. These spaces have minimal sedimentation.

(C) *Aquatic invertebrates for food*. The habitat is capable of supporting an aquatic invertebrate community that includes crustaceans, insects, and aquatic snails.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. The features essential to the conservation of these species may require special management considerations or protection to reduce the following threats: Water quality degradation from contaminants, alteration to natural flow regimes, and physical habitat modification.

The areas designated for critical habitat include both surface and subsurface critical habitat components. The surface critical habitat includes the spring outlets and outflow up to the high water line and 150 ft (80 m) of downstream habitat, but does not include human-made structures (such as buildings, aqueducts, runways, roads, and other paved areas); nor does it include upland habitat adjacent to streams. However, the subterranean aquifer may extend below such structures beneath the surface habitat. The subsurface critical habitat includes underground features in a circle with a radius of 984 ft (300 m) around the springs. Most of designated critical habitat is a subsurface designation and only includes the physical area beneath any buildings on the surface.

We detailed threats to surface and subsurface habitats under *A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range* in the final listing rule for the Georgetown and Salado salamanders (79 FR 10236, February 24, 2014, pp. 79 FR 10258–10279). The Georgetown and Salado salamanders are sensitive to modification of surface (*i.e.*, spring openings and outflow) and subsurface habitats. Due to the connectivity between the surface and subsurface habitats, an impact to one

will affect the other. Examples of surface habitat modifications may include (but are not limited to) damage to spring openings, sedimentation due to construction activities, and installation of impoundments. Examples of impacts to subsurface habitat may include (but are not limited to) pipeline construction, replacement, and maintenance; excavation for construction or quarrying; and groundwater depletion that can reduce spring flow. The depth of the subsurface habitat will vary from site to site.

For these salamanders, special management considerations or protections may be needed to address identified threats. Management activities that could ameliorate threats to surface habitat include (but are not limited to): (1) Protecting the quality of cave and spring water by implementing comprehensive programs to control and reduce point sources and non-point sources of pollution throughout the Northern Segment of the Edwards Aquifer; (2) minimizing the likelihood of pollution events or surface runoff from existing and future development that would affect groundwater quality; (3) protecting groundwater and spring flow quantity (for example, by implementing water conservation and drought contingency plans throughout the Northern Segment of the Edwards Aquifer); (4) protecting water quality and quantity from present and future quarrying; (5) excluding cattle and feral hogs from spring openings and outflow through fencing to protect spring habitats from damage; and (6) fencing and signage to protect spring habitats from human vandalism. Some of the management activities listed above, such as those that protect spring flow and groundwater quality, protect both surface and subsurface habitats, as these are interconnected.

Additional management activities that could ameliorate threats that are specific to subsurface habitat include (but are not limited to): (1) The development and implementation of void mitigation plans for construction projects to prevent impacts to salamanders in the event of severed aquifer conduits or interrupted groundwater flow paths; (2) site-specific plans developed by geotechnical engineers to prevent changes to subsurface water flow from construction activities; (3) the presence of environmental monitors during construction, excavation, and drilling activities to monitor spring flow; and (4) post-construction monitoring of spring flow. Because subsurface habitat differs with regard to groundwater flow paths, depth, and amount of water-bearing rocks with voids that can support

salamanders, management, and mitigation plans to ameliorate threats will need to be developed on a site-specific basis.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat. During our preparation for designating critical habitat for the two salamander species, we reviewed: (1) Data for historical and current occurrence; (2) information pertaining to habitat features essential for the conservation of these species; and (3) scientific information on the biology and ecology of the two species. We have also reviewed a number of studies and surveys of the two salamander species that confirm historical and current occurrence of the two species including, but not limited to, Sweet (1978; 1982), Russell (1993), Warton (1997), City of Austin (COA)(2001), Chippindale et al. (2000), Hillis et al. (2001), and Devitt et al. (2019). Finally, salamander site locations and observations were verified with the aid of salamander biologists, museum collection records, and site visits.

We are not designating any additional areas outside the geographical area occupied by these species because we have determined that occupied areas are sufficient to conserve the Georgetown and Salado salamanders, although we acknowledge that other areas, such as the recharge zone of the aquifers supporting salamander locations, are very important to the conservation of the species. This critical habitat designation delineates the habitat that is physically occupied and used by the species rather than delineating all land or aquatic areas that influence the species. We also recognize that there may be additional occupied areas outside of the areas designated as critical habitat that we are not aware of at the time of this designation that may be necessary for the conservation of the species. For the purpose of designating critical habitat for the Georgetown and Salado salamanders, we define an area as occupied based upon the reliable observation of either salamander species

by a knowledgeable scientist and cited within published articles, unpublished reports, and Service files including Hunter and Russell (1993, p. 7–8), Pierce and Wall (2011, pp. 2–3), Chippindale et al. (2000, pp. 39–43), Diaz and Montagne (2017, p. 6), Cambrian Environmental (2016c, pp. 5–6), Devitt et al. (2019a, pp. 2,626, 2,628), and Devitt et al. (2019b, pp. 16–18). It is very difficult to determine whether a salamander population has been extirpated from a spring site due to these species' ability to occupy the inaccessible subsurface habitat. The Georgetown and Salado salamanders are not capable of long-distance dispersal between isolated springs due to their reliance on discrete, groundwater-dependent ecosystems. Springs in central Texas are frequently historical features of the landscape that predate European settlement of the North American continent (Brune 1981, pp. 65–69, 473–476). We, therefore, consider sites with observations of salamanders at the time of listing to be currently occupied, unless that spring or cave site had been destroyed.

Based on our review, the critical habitat areas (described below) are within the geographical range occupied by at least one of the two salamander species and meet the definition of critical habitat. The true extent to which the subterranean populations of these species exist below ground away from outlets of the spring system is unknown because the hydrology of central Texas is very complex and information on the hydrology of specific spring sites is largely unknown. We will continue to seek information to increase our understanding of spring hydrology and salamander underground distribution to inform conservation efforts for these species. At the time of this final critical habitat rule, the best scientific evidence available indicates that a population of groundwater-dependent *Eurycea* salamanders can extend at least 984 ft (300 m) from the spring opening through underground conduits or voids between rocks. For example, the Austin blind salamander is thought to occur underground throughout the entire Barton Springs complex (Dries 2011, pers. comm.). The spring habitats used by salamanders of the Barton Springs complex are not connected on the surface, so the Austin blind salamander population extends at least 984 ft (300 m) underground, as this is the approximate distance between the farthest two outlets within the Barton Springs complex known to be occupied by the species.

We designate critical habitat in areas that we have determined are occupied

by one of the two salamanders and contain physical or biological features essential to the conservation of the species. We delineated both surface and subsurface critical habitat components. As previously stated, a Jollyville Plateau salamander was observed to have traveled up to 1,640 ft (500 m) after multiple years (*i.e.*, 2010–2014) in Bull Creek (Bendik et al. 2016, p. 9). However, the surface critical habitat component was delineated by starting with the spring point locations that are occupied by the salamanders and extending a line upstream and downstream 262 ft (80 m). This was the farthest distance a *Eurycea* salamander has been observed from a spring outlet over a 4-month period (*i.e.*, January to April) in a single year (Bendik et al. 2016, pp. 9–10) and is likely a more reasonable distance for salamanders in common hydrological settings. We applied this maximum distance to account for the potential movement and surface habitat use of Georgetown and Salado salamanders upstream and downstream of spring openings. It is reasonable to consider the downstream and upstream habitat occupied based on the dispersal capabilities observed in individuals of very similar species. When determining surface critical habitat boundaries, we were not able to delineate specific stream segments on the map due to the small size of the streams. Therefore, we drew a circle with a 262-ft (80-m) radius representing the extent the surface population of the site is estimated to exist upstream and downstream. This circle does not include upland habitat adjacent to streams. The surface critical habitat includes the spring outlets and outflow up to the ordinary high water mark (the average amount of water present in nonflood conditions, as defined in 33 CFR 328.3(e)) and 262 ft (80 m) of upstream and downstream habitat (to the extent that this habitat is ever present), including the dry stream channel during periods of no surface flow. We acknowledge that some spring sites occupied by one of the two salamanders are the start of the watercourse, and upstream habitat does not exist for these sites. The surface habitat we are designating as critical habitat does not include human-made structures (such as buildings, aqueducts, runways, roads, and other paved areas) within this circle, nor does it include upland habitat adjacent to streams.

We delineated the subsurface critical habitat unit boundaries by starting with the cave or spring point locations that are occupied by the salamanders. Depth to subsurface habitat will vary from site

to site based on local geology. From these cave or spring points, we delineated an area with a 984-ft (300-m) radius to create the polygons that capture the extent to which we estimate the salamander populations exist through underground habitat. This radial distance comes from observations of the Austin blind salamander, which is thought to occur underground throughout the entire Barton Springs complex (Dries 2011, COA, pers. comm.). The Austin blind salamander is a reasonable surrogate for Salado and Georgetown salamanders, as it also inhabits subsurface, water-filled voids in the underlying Edwards Aquifer (Hillis et al. 2001, p. 23). The spring outlets used by salamanders of the Barton Springs complex are not connected on the surface, so the Austin blind salamander population extends a horizontal distance of at least 984 ft (300 m) underground, as this is the approximate distance between the farthest two outlets within the Barton Springs complex known to be occupied by the species. This distance was applied to the Georgetown and Salado salamanders given their reliance on subsurface aquifer habitats (Bendik and Gluesenkamp 2012, pp. 4–5; Bendik et al. 2013, pp. 10–12, 15; Bendik 2017, p. 5,013; Diaz and Bronson-Warren 2018, p. 11; Devitt et al. 2019, p. 2,625). Polygons that were within 98 ft (30 m) of each other were merged together as these areas have the potential to be connected underground (Devitt et al. 2019a, pp. 2,629–2,630). Each merged polygon was then revised by removing extraneous divots or protrusions that resulted from the merge process.

Developed areas of surface habitat, such as lands covered by buildings, pavement, and other structures, lack physical or biological features for the Georgetown and Salado salamanders. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the final rule and are not designated as critical habitat. Therefore, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

We designate as critical habitat lands that we have determined are occupied at the time of listing (*i.e.*, currently occupied) and that contain one or more

of the physical or biological features that are essential to support life-history processes of the species.

The critical habitat designation is defined by the maps, as modified by any accompanying regulatory text, presented at the end of this document under Regulation Promulgation. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on <http://www.regulations.gov> at Docket No. FWS-R2-ES-2020-0048 and on our internet site at https://www.fws.gov/southwest/es/AustinTexas/ESA_Sp_Salamanders.html.

Final Critical Habitat Designation

We are designating as critical habitat nine units for the Georgetown salamander and seven units for the Salado salamander. In Tables 1 and 2 below, we present the critical habitat units for the Georgetown and Salado salamanders. All units are considered occupied by the relevant species at the time of listing. We also provide unit descriptions for all Georgetown and Salado salamander critical habitat units. The critical habitat areas we describe below constitute our current best assessment of subsurface and surface areas that meet the definition of critical habitat for the Georgetown and Salado salamanders. During periods of drought or dewatering on the surface in and

around spring sites, access to the subsurface water table must be provided for shelter and protection. Surface critical habitat includes the spring outlets and outflow up to the high water line and 262 ft (80 m) of downstream habitat, but does not include terrestrial habitats or human-made structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule (see **DATES**, above) or land adjacent to streams; however, the subterranean aquifer may extend below such structures. The subsurface critical habitat includes underground features in a circle with a radius of 984 ft (300 m) around the springs.

TABLE 1—CRITICAL HABITAT UNITS FOR THE GEORGETOWN SALAMANDER

Critical habitat unit	Land ownership by type	Size of unit in acres (hectares)
1. Water Tank Cave Unit	Private	68 (28)
2. Hogg Hollow Spring Unit	Private, Federal	122 (49)
3. Cedar Hollow Spring Unit	Private	68 (28)
4. Lake Georgetown Unit	Federal, Private	134 (54)
5. Buford Hollow Spring Unit	Federal, Private	68 (28)
6. Swinbank Spring Unit	City, Private	68 (28)
7. Avant Spring Unit	Private	68 (28)
8. Shadow Canyon Spring Unit	City, Private	68 (28)
9. Garey Ranch Spring Unit	Private	68 (28)
Total .....	.....	732 (299)

Note: Area sizes may not sum due to rounding. Area estimates reflect all land within critical habitat unit boundaries.

TABLE 2—CRITICAL HABITAT UNITS FOR THE SALADO SALAMANDER

Critical habitat unit	Land ownership by type	Size of unit in acres (hectares)
1. Hog Hollow Spring Unit	Excluded under section 4(b)(2) of the Act.	
2. Solana Spring Unit	Excluded under section 4(b)(2) of the Act.	
3. Cistern Spring Unit	Excluded under section 4(b)(2) of the Act.	
4. IH-35 Unit	Private, State, City	175 (71)
5. King's Garden Main Spring Unit	Private	68 (28)
6. Cobbs Spring Unit	Private	68 (28)
7. Cowan Creek Spring Unit	Private	68 (28)
8. Walnut Spring Unit	Private, County	68 (28)
9. Twin Springs Unit	Private, County	68 (28)
10. Bat Well Cave Unit	Private	68 (28)
Total .....	.....	583 (239)

Note: Area sizes may not sum due to rounding. Area estimates reflect all land within critical habitat unit boundaries.

Georgetown Salamander

Critical habitat units for the Georgetown salamander may require special management because of the potential for groundwater pollution from current and future development in the watershed, present operations and future expansion of quarrying activities, depletion of groundwater, and other

threats (see Special Management Considerations or Protection, above). All units are occupied by the Georgetown salamander. The designation includes the spring outlets and outflow up to the high-water mark and 262 ft (80 m) of upstream and downstream habitat. Units are further delineated by drawing a circle with a radius of 984 ft (300 m)

around the spring, representing the extent of the subterranean critical habitat. For cave populations of the Georgetown salamander, the unit is delineated by drawing a circle with a radius of 984 ft (300 m) around the underground location of the salamanders, representing the extent of the subsurface critical habitat.

Unit 1: Water Tank Cave Unit

Unit 1 consists of approximately 68 ac (28 ha) of private land in west-central Williamson County, Texas. A golf course crosses the unit from northwest to southeast, and there are several roads in the eastern part of the unit. A secondary road crosses the extreme southern portion of the unit, and there are residences in the northwestern, southwestern, and west-central portions of the unit. This unit contains Water Tank Cave, which is occupied by the Georgetown salamander. Only subsurface critical habitat was designated for this cave population. The unit contains the physical or biological features essential for the conservation of the species.

Unit 2: Hogg Hollow Spring Unit

Unit 2 consists of approximately 122 ac (49 ha) of U.S. Army Corps of Engineers land and private land in Williamson County, Texas. The unit is located south of Lake Georgetown and is mostly undeveloped. The northwestern part of the unit includes Sawyer Park, part of the Lake Georgetown recreation area. This unit contains two springs: Hogg Hollow Spring and Hogg Hollow 2 Spring, which are occupied by the Georgetown salamander. Hogg Hollow Spring is located on Hogg Hollow, and Hogg Hollow 2 Spring is located on an unnamed stream, both tributaries to Lake Georgetown. The unit contains the physical or biological features essential for the conservation of the species.

Unit 3: Cedar Hollow Spring Unit

Unit 3 consists of approximately 68 ac (28 ha) of private land in west-central Williamson County, Texas. A secondary road crosses the extreme southern portion of the unit, and there are residences in the northwestern, southwestern, and west-central portions of the unit. This unit contains Cedar Hollow Spring, which is occupied by the Georgetown salamander. The spring is located on Cedar Hollow, a tributary to Lake Georgetown. The unit contains the physical or biological features essential for the conservation of the species.

Unit 4: Lake Georgetown Unit

Unit 4 consists of approximately 134 ac (54 ha) of Federal and private land in west-central Williamson County, Texas. Part of the unit is the U.S. Army Corps of Engineers' Lake Georgetown property. There are currently no plans to develop the property. There is some control of public access. Unpaved roads are found in the western portion of the unit, and a trail begins in the central part of the unit and leaves the northeast corner. A

secondary road crosses the extreme southern portion of the unit, and there are residences in the northwestern, southwestern, and west-central portions of the unit. A large quarry is located a short distance southeast of the unit. This unit includes two springs, Knight (Crockett Gardens) Spring and Cedar Breaks Hiking Trail Spring, which are occupied by the Georgetown salamander. The springs are located on an unnamed tributary to Lake Georgetown. A portion of the northern part of the unit extends under Lake Georgetown. The unit contains the physical or biological features essential for the conservation of the species.

Unit 5: Buford Hollow Spring Unit

Unit 5 consists of approximately 68 ac (28 ha) of Federal and private land in west-central Williamson County, Texas. The unit is located just below the spillway for Lake Georgetown. The U.S. Army Corps of Engineers owns most of this unit as part of Lake Georgetown. The D.B. Wood Road, a major thoroughfare, crosses the eastern part of the unit. The rest of the unit is undeveloped. This unit contains Buford Hollow Springs, which is occupied by the Georgetown salamander. The spring is located on Buford Hollow, a tributary to the North Fork San Gabriel River. The unit contains the physical or biological features essential for the conservation of the species.

Unit 6: Swinbank Spring Unit

Unit 6 consists of approximately 68 ac (28 ha) of City and private land in west-central Williamson County, Texas. The unit is located near River Road south of Melanie Lane. The northern part of the unit is primarily in residential development, while the southern part of this unit is primarily undeveloped. This unit contains Swinbank Spring, which is occupied by the Georgetown salamander. The spring is located just off the main channel of North Fork San Gabriel River. The unit contains the physical or biological features essential for the conservation of the species. The population of Georgetown salamanders in the spring is being monitored monthly as part of the Williamson County Regional HCP's efforts to conserve the species.

Unit 7: Avant Spring Unit

Unit 7 consists of approximately 68 ac (28 ha) of private land in west-central Williamson County, Texas. The northern part of a large quarry is along the southwestern edge of the unit. The rest of the unit is undeveloped. This unit contains Avant's (Capitol Aggregates) Spring, which is occupied

by the Georgetown salamander. The spring is close to the streambed of the Middle Fork of the San Gabriel River. The unit contains the physical or biological features essential for the conservation of the species.

Unit 8: Shadow Canyon Spring Unit

Unit 8 consists of approximately 68 ac (28 ha) of City and private land in west-central Williamson County, Texas. The unit is located just south of State Highway 29. This unit contains Shadow Canyon Spring, which is occupied by the Georgetown salamander. The spring is located on an unnamed tributary of South Fork San Gabriel River. The unit contains the essential physical or biological features for the conservation of the species. The unit is authorized for development under the Shadow Canyon HCP. Impacts to the endangered golden-cheeked warbler (*Dendroica chrysoparia*) and Bone Cave harvestman (*Texella reyesi*) are permitted under the Shadow Canyon HCP; however, impacts to Georgetown salamander are not covered under the HCP.

Unit 9: Garey Ranch Spring Unit

Unit 9 consists of approximately 68 ac (28 ha) of private land in Williamson County, Texas. The unit is located north of RM 2243. The unit is mostly undeveloped. A small amount of residential development enters the southern and eastern parts of the unit. This unit contains Garey Ranch Spring, which is occupied by the Georgetown salamander. It is located on an unnamed tributary to the South Fork San Gabriel River. The unit contains the physical or biological features essential for the conservation of the species.

Salado Salamander

Critical habitat units for the Salado salamander may require special management because of the potential for groundwater pollution from current and future development in the watershed, present operations and future expansion of quarrying activities, depletion of groundwater, and other threats (see Special Management Considerations or Protection, above). All units are considered to be occupied by the Salado salamander. The designation includes the spring outlets and outflow up to the high-water mark and 262 ft (80 m) of upstream and downstream habitat. Units are further delineated by drawing a circle with a radius of 984 ft (300 m) around the spring, representing the extent of the subterranean critical habitat. For cave populations of the Salado salamander, the unit is delineated by drawing a circle with a radius of 984 ft (300 m) around the

underground location of the salamanders, representing the extent of the subsurface critical habitat.

Unit 1: Hog Hollow Spring Unit

Unit 1 consists of approximately 68 ac (28 ha) of private land located in southwestern Bell County, Texas. The unit is primarily undeveloped ranch land. This unit contains Hog Hollow Spring, which is occupied by the Salado salamander. The unit is located on a tributary to Rumsey Creek in the Salado Creek drainage and contains the physical or biological features essential for the conservation of the species. In 2016, the owners of the spring entered into an agreement with The Nature Conservancy for a perpetual conservation easement that provides long-term protection for this site. We have excluded the entire unit from this final critical habitat designation (see Exclusions, below).

Unit 2: Solana Spring Unit

Unit 2 consists of approximately 68 ac (28 ha) of private land located in southwestern Bell County, Texas. The unit is primarily undeveloped ranch land. This unit contains Solana Spring, which is occupied by the Salado salamander. The unit is located on a tributary to Rumsey Creek in the Salado Creek drainage and contains the physical or biological features essential for the conservation of the species. In 2016, the owners of the spring entered into an agreement with The Nature Conservancy for a perpetual conservation easement that provides long-term protection for this site. We have excluded the entire unit from the final critical habitat designation (see Exclusions, below).

Unit 3: Cistern Spring Unit

Unit 3 consists of approximately 68 ac (28 ha) of private land located in southwestern Bell County, Texas, on the same private ranch as Units 1 and 2 for the Salado salamander. The unit is primarily undeveloped ranch land. This unit contains Cistern Spring, which is occupied by the Salado salamander. The unit is located on a tributary to Rumsey Creek in the Salado Creek drainage and contains the physical or biological features essential for the conservation of the species. In 2016, the owners of the spring entered into an agreement with The Nature Conservancy for a perpetual conservation easement that provides long-term protection for this site. We have excluded the entire unit from the final critical habitat designation (see Exclusions, below).

Unit 4: IH-35 Unit

Unit 4 consists of approximately 175 ac (71 ha) of private, State, and City of Salado land located in southwestern Bell County, Texas, in the southern part of the Village of Salado. The unit extends along Salado Creek on both sides of Interstate Highway 35 (IH 35). The unit contains the physical or biological features essential for the conservation of the species. The IH 35 right-of-way crosses Salado Creek and is owned by the Texas Department of Transportation. The unit is a mixture of residential and commercial properties on its eastern portion, with some undeveloped ranch land in the western part west of IH-35. This unit contains Robertson Springs complex, located on private property. West of IH-35 consists of two springs, Creek Spring and Sam Bass Spring, and five spring openings, Bathub, Beaver Upper, Beaver Middle, Headwaters, and Maria, occupied by the Salado salamander. East of IH-35, the Downtown Spring complex of Unit 4 contains five springs, Anderson Spring, Big Boiling Spring, Lazy Days Fish Farm, Lil' Bubbly Spring, and Side Spring, which are all located on private property and occupied by the Salado salamander.

The spring habitat within this unit has been modified. In the fall of 2011, the outflow channels and edges of Big Boiling Spring and Lil' Bubbly Spring were reconstructed by a local organization, with large limestone blocks and mortar, to increase human access and visitation. In addition, in response to other activity in the area, the U.S. Army Corps of Engineers issued a cease-and-desist order to the Salado Chamber of Commerce in October 2011, for unauthorized discharge of dredged or fill material that occurred in this area (Brooks 2011, U.S. Corps of Engineers, in litt.). This order was issued in relation to the need for a section 404 permit under the Clean Water Act (33 U.S.C. 1251 *et seq.*). A citation from a Texas Parks and Wildlife Department (TPWD) game warden was also issued in October 2011, due to the need for a sand and gravel permit from the TPWD for work being conducted within TPWD jurisdiction (Heger 2012a, pers. comm.). The citation was issued because the Salado Chamber of Commerce had been directed by the game warden to stop work within TPWD jurisdiction, which they did temporarily, but work started again contrary to the game warden's directive (Heger 2012a, pers. comm.). A sand and gravel permit was obtained on March 21, 2012. The spring run modifications were already completed by this date, but further modifications in

the springs were prohibited by the permit. Additional work on the bank upstream of the springs was permitted and completed (Heger 2012b, pers. comm.).

Unit 5: King's Garden Main Spring Unit

Unit 5 consists of approximately 68 ac (28 ha) of private land in northern Williamson County, Texas. The unit is undeveloped land. The unit contains King's Garden Main Spring, which is occupied by the Salado salamander. The surface population of King's Garden Main Spring has been observed at the spring's outlet. The unit contains the physical or biological features essential for the conservation of the species.

Unit 6: Cobbs Spring Unit

Unit 6 consists of approximately 68 ac (28 ha) of private land located in northwestern Williamson County, Texas. The unit is undeveloped land. This unit contains Cobbs Spring, which is occupied by the Salado salamander. Cobbs Springs is located on Cobbs Springs Branch. The subsurface population of Cobbs Spring has been observed in Cobbs Well (Gluesenkamp 2011a, TPWD, pers. comm.), which is located approximately 328 ft (100 m) to the southwest of the spring. The unit contains the physical or biological features essential for the conservation of the species.

Unit 7: Cowan Creek Spring Unit

Unit 7 consists of approximately 68 ac (28 ha) of private land located in west-central Williamson County, Texas. The northern portion of the unit is residential development; the remainder is undeveloped. This unit contains Cowan Creek Spring, which is occupied by the Salado salamander. The spring is located on Cowan Creek. The unit contains the physical or biological features essential for the conservation of the species.

Unit 8: Walnut Spring Unit

Unit 8 consists of approximately 68 ac (28 ha) of private and Williamson County land located in west-central Williamson County, Texas. The western, eastern, and northeastern portions of the unit contain low-density residential development; the southern and north-central portions are undeveloped. The extreme southeastern corner of the unit is part of Williamson County Conservation Foundation's Twin Springs Preserve. This unit contains Walnut Spring, which is occupied by the Salado salamander. The spring is located on Walnut Spring Hollow. The unit contains the physical or biological

features essential for the conservation of the species.

Unit 9: Twin Springs Unit

Unit 9 consists of approximately 68 ac (28 ha) of private and Williamson County land located in west-central Williamson County, Texas. The northern portion of the unit contains low-density residential development; the remainder of the unit is undeveloped. The majority of the unit is part of Williamson County Conservation Foundation's Twin Springs Preserve. The preserve is managed by Williamson Conservation Foundation as a mitigation property for the take of golden-cheeked warbler and Bone Cave harvestman under the Williamson County Regional HCP. The preserve habitat will be undeveloped in perpetuity. Salamander populations are monitored, and there is some control of public access. This unit contains Twin Springs, which is occupied by the Salado salamander. The spring is located on Taylor Ray Hollow, a tributary of Lake Georgetown. The unit contains the physical or biological features essential for the conservation of the species.

Unit 10: Bat Well Cave Unit

Unit 10 consists of approximately 68 ac (28 ha) of private land located in west-central Williamson County, Texas. The western, northern, and southern portion of the unit contains residential development. This unit contains Bat Well Cave, a cave occupied by the Salado salamander. The cave is located in the Cowan Creek watershed. Only subsurface critical habitat was designated for this cave population. The unit contains the physical or biological features essential to the conservation of the species.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species.

We published a final rule revising the definition of destruction or adverse modification on August 27, 2019 (84 FR 44976). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.

If a Federal action may affect a listed species or its critical habitat, the

responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation.

Compliance with the requirements of section 7(a)(2), is documented through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define “reasonable and prudent alternatives” (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Service Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 set forth requirements for Federal agencies to reinitiate formal consultation on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law) and, subsequent to the previous consultation: (1) If the amount or extent of taking specified in the incidental take statement is exceeded; (2) if new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or (4) if a new species is listed or critical habitat designated that may be affected by the identified action.

In such situations, Federal agencies sometimes may need to request reinitiation of consultation with us, but the regulations also specify some exceptions to the requirement to reinitiate consultation on specific land management plans after subsequently listing a new species or designating new critical habitat. See the regulations for a description of those exceptions.

Application of the “Destruction or Adverse Modification” Standard

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may violate section 7(a)(2) of the Act by destroying or adversely modifying such habitat, or that may be affected by such designation.

Activities that the Service may, during a consultation under section 7(a)(2) of the Act, be considered likely to destroy or adversely modify critical habitat include, but are not limited to:

(1) Actions that would physically disturb the surface or subsurface habitat

upon which these two salamander species depend. Such activities could include, but are not limited to, channelization, removal of substrate, clearing of vegetation, construction of commercial and residential development, quarrying, and other activities that result in the physical destruction of habitat or the modification of habitat so that it is not suitable for the species.

(2) Actions that would increase the concentration of sediment or contaminants in the surface or subsurface habitat. Such activities could include, but are not limited to, increases in impervious cover in the surface watershed, inadequate erosion controls on the surface and subsurface watersheds, and release of pollutants into the surface water or connected groundwater at a point source or by dispersed release (non-point source). These activities could alter water conditions to levels that are harmful to the Georgetown and Salado salamanders or their prey and result in direct, indirect, or cumulative adverse effects to these salamander individuals and their life cycles. Sedimentation can also adversely affect salamander habitat by reducing access to interstitial spaces.

(3) Actions that would deplete the aquifer to an extent that decreases or stops the flow of occupied springs or that reduces the quantity of subterranean habitat used by the species. Such activities could include, but are not limited to, water withdrawals from aquifers, increases in impervious cover over recharge areas, and channelization or other modification of recharge features that would decrease recharge. These activities could dewater habitat or cause reduced water quality to levels that are harmful to one of the two salamanders or their prey and result in adverse effects to their habitat.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that the Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DoD), or designated for its use, that are subject to an integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation. No DoD lands with a completed INRMP are within the critical habitat designation.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if we determine that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless we determine, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor. On December 18, 2020, we published a final rule in the **Federal Register** (85 FR 82376) revising portions of our regulations pertaining to exclusions of critical habitat. These final regulations became effective on January 19, 2021, and apply to critical habitat rules for which a proposed rule was published after January 19, 2021. Consequently, these new regulations do not apply to this final rule.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise discretion to exclude the area only if such exclusion would not result in the extinction of the species. We describe below the process that we undertook for taking into consideration each category of impacts and our analyses of the relevant impacts.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. In order to consider economic impacts, we prepared an incremental effects memorandum (IEM) and

screening analysis which, together with our narrative and interpretation of effects we consider our draft economic analysis (DEA) of the proposed critical habitat designation and related factors (Industrial Economics, Incorporated (IEc) 2020, entire). The analysis, dated April 14, 2020, was made available for public review from September 23, 2020, through November 16, 2020 (IEc 2020, entire). The DEA addressed probable economic impacts of critical habitat designation for the Georgetown and Salado salamanders. Following the close of the comment period, we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Additional information relevant to the probable incremental economic impacts of critical habitat designation for the Georgetown and Salado salamanders is summarized below and available in the screening analysis for the Georgetown and Salado salamanders (IEc 2021, entire), available at <http://www.regulations.gov>.

We received public comment on our DEA during the public comment period and updated the analysis based on public comment. The economic analysis now acknowledges “The designation of critical habitat may cause developers to perceive that private lands will be subject to use restrictions or litigation from third parties, resulting in costs. Data limitations prevent quantification of the possible incremental reduction in property values” (IEc 2021, p. 2 & 12–13). The updates made to the DEA did not change the overall conclusions of the analysis. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the designation of critical habitat for the Georgetown and Salado salamanders, first we identified, in the IEM dated April 14, 2020, probable incremental economic impacts associated with the following categories of activities: (1) Future stream/river crossings and bridge replacements and maintenance; (2) pipeline construction, replacement, maintenance, or removal; (3) electrical transmission line construction; (4) stream restoration activities for habitat improvement; (5) herbicide and pesticide use along stream banks; (6) irrigation and water supply system installations; (7) livestock management and livestock facilities construction; (8) bank stabilization projects; (9) disaster

debris removal; (10) repairs to existing and damaged roads, bridges, utilities, and parks; (11) construction of tornado safe rooms, and demolition of flood-prone structures; (12) return of land to open space in perpetuity; and (13) removal of hazardous fuels in wildland urban interface to reduce the risk of catastrophic wildfire. We considered each industry or category individually. Additionally, we considered whether their activities may have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the Georgetown or Salado salamander are present, Federal agencies already are required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species. When this critical habitat designation is effective (see **DATES**, above), consultations to avoid the destruction or adverse modification of critical habitat will be incorporated into the existing consultation process.

In our IEM, we attempted to clarify the distinction between the effects that result from the species being listed and those attributable to the critical habitat designation (*i.e.*, difference between the jeopardy and adverse modification standards) for the Georgetown and Salado salamander's critical habitat. Because all of the units we are designating as critical habitat for the Georgetown and Salado salamanders are occupied, we do not expect that the critical habitat designation will result in any additional consultations above and beyond those caused by the species' listing. The conservation recommendations provided to address impacts to the occupied critical habitat will be the same as those recommended to address impacts to the species because the habitat tolerances of the Georgetown and Salado salamanders are inextricably linked to the health, growth, and reproduction of the salamanders, which are present and confined year-round in their occupied critical habitat. Furthermore, because the designated critical habitat and the Georgetown and Salado salamanders' known range are identical, the results of consultation under adverse modification are not likely to differ from the results of consultation under jeopardy. In the event of an adverse modification determination, we expect that reasonable and prudent alternatives to avoid jeopardy to the species will also

avoid adverse modification of the critical habitat. The only incremental impact of critical habitat designation that we anticipate is the small (not expected to exceed \$38,500 per year) administrative effort required during section 7 consultation to document effects on the physical and biological features of the critical habitat and whether the action appreciably diminishes the value of critical habitat as a whole for the conservation of the listed species (IEc 2021).

The critical habitat designations for the Georgetown and Salado salamanders amount to a total of approximately 1,315 ac (538 ha) in Bell and Williamson Counties, Texas. In these areas, any actions that may affect the species or its habitat will also affect designated critical habitat, and it is unlikely that any additional conservation efforts will be recommended to address the adverse modification standard over and above those recommended as necessary to avoid jeopardizing the continued existence of the Georgetown and Salado salamanders. While this additional analysis will require time and resources by both the Federal action agency and the Service, it is believed that, in most circumstances, these costs will predominantly be administrative in nature and will not be significant.

Incremental costs are likely to be minor and primarily limited to administrative efforts that consider adverse modification in consultation. This finding is based on these factors: (1) All activities with a Federal nexus occurring within the critical habitat designations will be subject to section 7 consultation requirements regardless of critical habitat designation due to the presence of listed species; and (2) since the Service predicts that the majority of project modifications avoiding jeopardy and adverse modification overlap, there will only be a limited number of project modification requests that are solely caused by a critical habitat designation (IEc 2020). The estimated \$38,500 per year of incremental costs associated with the designation of critical habitat is well below \$100 million and, therefore, is unlikely to trigger additional requirements under State or local regulations. Further, while some perceptual effects may arise, they are not expected to result in substantial costs.

Consideration of Impacts on National Security and Homeland Security

The Service must consider impacts on national security, including homeland security, under section 4(a)(3)(B)(i) and on those DoD lands or areas not covered by section 4(a)(3)(B)(i), because section

4(b)(2) requires the Service to consider those impacts whenever it designates critical habitat. Accordingly, if DoD, Department of Homeland Security (DHS), or another Federal agency has requested exclusion based on an assertion of national-security or homeland-security concerns, or we have otherwise identified national-security or homeland-security impacts from designating particular areas as critical habitat, we generally have reason to consider excluding those areas. We did not identify any national security or homeland security impacts, nor did we receive any requests for exclusion based on national or homeland security.

Consideration of Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security discussed above. Other relevant impacts may include, but are not limited to, impacts to Tribes, States, local governments, public health and safety, community interests, the environment (such as increased risk of wildfire or pest and invasive species management), Federal lands, and conservation plans, agreements, or partnerships. To identify other relevant impacts that may affect the exclusion analysis, we consider a number of factors, including whether there are permitted conservation plans covering the species in the area—such as HCPs, safe harbor agreements (SHAs), or candidate conservation agreements with assurances (CCAAs)—or whether there are non-permitted conservation agreements and partnerships that may be impaired by designation of, or exclusion from, critical habitat. In addition, we look at whether Tribal conservation plans or partnerships, Tribal resources, or government-to-government relationships of the United States with Tribal entities may be affected by the designation. We also consider any State, local, public-health, community-interest, environmental, or social impacts that might occur because of the designation.

Exclusions

Exclusions Based on Economic Impacts

The Service considered the economic impacts of the critical habitat designation as described above. Based on this information, the Secretary has determined not to exercise her discretion to exclude any areas from this designation of critical habitat for the Georgetown or Salado salamander based on economic impacts.

Exclusions Based on Impacts on National Security and Homeland Security

In preparing this rule, we have determined that the lands within the designation of critical habitat for Georgetown and Salado salamanders are not owned or managed by DoD or the Department of Homeland Security. Therefore, we anticipate no impact on national security or homeland security. Based on this information, the Secretary has determined not to exercise her discretion to exclude any areas from this designation of critical habitat for the Georgetown or Salado salamander based on impacts on national security or homeland security.

Exclusions Based on Other Relevant Impacts

When analyzing other relevant impacts of including a particular area in a designation of critical habitat, we weigh those impacts relative to the conservation value of the particular area. To determine the conservation value of designating a particular area, we consider a number of factors, including, but not limited to, the additional regulatory benefits that the area would receive due to the protection from destruction or adverse modification as a result of actions with a Federal nexus, the educational benefits of mapping essential habitat for recovery of the listed species, and any benefits that may result from a

designation due to State or Federal laws that may apply to critical habitat.

In the case of the Georgetown and Salado salamanders, the benefits of critical habitat include public awareness of the presence of the two species and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for the two species due to protection from destruction or adverse modification of critical habitat. Continued implementation of an ongoing management plan that provides conservation equal to or more than the protections that result from a critical habitat designation would reduce those benefits of including that specific area in the critical habitat designation.

We evaluate the existence of a conservation plan when considering the benefits of inclusion. We consider a variety of factors, including, but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical or biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After identifying the benefits of inclusion and the benefits of exclusion,

we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction of the species. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Based on the information provided by entities seeking exclusion, any additional public comments we received, and the best scientific data available, we evaluated whether certain lands in the proposed critical habitat designation were appropriate for exclusion from this final designation under section 4(b)(2) of the Act. If our analysis indicated that the benefits of excluding lands from the final designation outweighed the benefits of designating those lands as critical habitat, then we identified those areas for the Secretary to exercise her discretion to exclude those lands from the final designation, unless exclusion would result in extinction.

In the paragraphs below, we provide a detailed balancing analysis of the areas being excluded under section 4(b)(2) of the Act. Table 3 below provides approximate areas (ac, ha) of lands that meet the definition of critical habitat but that we are excluding from this final critical habitat designation under section 4(b)(2) of the Act.

TABLE 3—AREAS EXCLUDED BY CRITICAL HABITAT UNIT FOR THE SALADO SALAMANDER

Critical habitat unit	Proposed critical habitat (ac (ha))	Area excluded (ac (ha))	Final critical habitat (ac (ha))
1. Hog Hollow Spring Unit	68 (28)	68 (28)	0
2. Solana Spring Unit	68 (28)	68 (28)	0
3. Cistern Spring Unit	68 (28)	68 (28)	0

Private or Other Non-Federal Conservation Plans or Agreements and Partnerships, in General

We sometimes exclude specific areas from critical habitat designations based in part on the existence of private or other non-Federal conservation plans or agreements and their attendant partnerships. A conservation plan or agreement describes actions that are designed to provide for the conservation needs of a species and its habitat, and may include actions to reduce or mitigate negative effects on the species caused by activities on or adjacent to the area covered by the plan. Conservation plans or agreements can be developed

by private entities with no Service involvement, or in partnership with the Service, sometimes through the permitting process under Section 10 of the Act.

When we undertake a discretionary section 4(b)(2) analysis, we evaluate a variety of factors to determine how the benefits of any exclusion and the benefits of inclusion are affected by the existence of private or other non-Federal conservation plans or agreements and their attendant partnerships. A non-exhaustive list of factors that we will consider for non-permitted plans or agreements is shown below. These factors are not required elements of

plans or agreements, and some elements may not apply to a particular plan or agreement.

(i) The degree to which the plan or agreement provides for the conservation of the species or the essential physical or biological features (if present) for the species.

(ii) Whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan or agreement will be implemented.

(iii) The demonstrated implementation and success of the chosen conservation measures.

(iv) The degree to which the record of the plan supports a conclusion that a

critical habitat designation would impair the realization of benefits expected from the plan, agreement, or partnership.

(v) The extent of public participation in the development of the conservation plan.

(vi) The degree to which there has been agency review and required determinations (e.g., State regulatory requirements), as necessary and appropriate.

(vii) Whether National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) compliance was required.

(viii) Whether the plan or agreement contains a monitoring program and adaptive management to ensure that the conservation measures are effective and can be modified in the future in response to new information.

Salado Salamander Units 1, 2, and 3—Solana Ranch Preserve

In 2013, the Texas Chapter of The Nature Conservancy was awarded funding through a Texas Parks and Wildlife Department non-traditional section 6 grant (Solana Ranch Recovery Land Acquisition, Grant TX E-154-RL-1) to obtain a conservation easement on 256 ac (104 ha) of the privately owned Solana Ranch in Bell County, Texas. The Nature Conservancy acquired the conservation easement in perpetuity from the landowner, Michaux Holdings Ltd., on June 29, 2016. That portion of the Solana Ranch included in the conservation easement, Solana Ranch Preserve, encompasses three spring outlets (i.e., Cistern, Hog Hollow, and Solana Springs) occupied by the Salado salamander (Francell 2012, p. 3) and the upstream lands surrounding these springs. The springs comprise the following critical habitat units for the Salado salamander: Hog Hollow Spring (Unit 1; 68 ac (28 ha)), Solana Spring (Unit 2; 68 ac (28 ha)), and Cistern Spring (Unit 3; 68 ac (28 ha)). The springs are located on a tributary to Rumsey Creek in the Salado Creek drainage and are upstream of other springs occupied by the Salado salamander along Salado Creek to the northeast. All three springs are considered high-quality habitat for the Salado salamander (Gluesenkamp 2011b, TPWD, pers. comm.). The Solana Ranch Preserve conservation easement establishes that these lands are protected and managed for the benefit of the Salado salamander. Management activities include: (1) Protection of the site from development or encroachment, (2) maintenance of the site as permanent open space that has been left in its natural vegetative state, (3) maintenance and repair of existing enclosure fences

around springs, and (4) research approved by the landowner. Grazing, hunting, and other recreational activities will be allowed.

The perpetual Solana Ranch Preserve conservation easement will result in long-term protection of the three springs located on Solana Ranch, including areas immediately upstream of the springs to maintain water quality. By protecting the springs and their surrounding areas, occupied Salado salamander habitat will be protected from development and other threats. Based on the actions to benefit the Salado salamander, we considered excluding a total of 204 ha (84 ac) of critical habitat within Solana Ranch Preserve lands, specifically Hog Hollow Spring (Unit 1; 68 ac (28 ha)), Solana Spring (Unit 2; 68 ac (28 ha)), and Cistern Spring (Unit 3; 68 ac (28 ha)), from this final Salado salamander critical habitat designation under section 4(b)(2) of the Act.

Benefits of Inclusion—Solana Ranch Preserve: The principal benefit of including an area in critical habitat designation is the requirement of Federal agencies to ensure that actions that they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, which is the regulatory standard of section 7(a)(2) of the Act under which consultation is completed. Federal agencies must consult with the Service on actions that may affect a listed species, and refrain from actions that are likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. For some cases, the outcome of these analyses will be similar, because effects to habitat will often result in effects to the species. Thus, critical habitat designation may provide greater benefits to the recovery of a species than listing would alone. Therefore, critical habitat designation may provide a regulatory benefit for the Salado salamander on lands covered under the Solana Ranch Preserve conservation easement when there is a Federal nexus present for a project that might adversely modify critical habitat.

Another possible benefit of including lands in critical habitat is public education regarding the potential conservation value of an area that may help focus conservation efforts on areas of high conservation value for certain species. We consider any information about the Salado salamander and its

habitat that reaches a wide audience, including parties engaged in conservation activities, to be valuable. Designation of critical habitat would provide educational benefits by informing Federal agencies and the public about the presence of listed species for all units.

In summary, we find that the benefits of inclusion of 204 ha (84 ac) lands within the Solana Ranch Preserve conservation easement are: (1) A regulatory benefit when there is a Federal nexus present for a project that might adversely modify critical habitat; and (2) educational benefits for the Salado salamander and its habitat.

Benefits of Exclusion—Solana Ranch Preserve: The benefits of excluding 204 ha (84 ac) of land within the Solana Ranch Preserve, under a perpetual conservation easement held by The Nature Conservancy, from the designation of critical habitat for the Salado salamander are substantial and include: (1) Continuance and strengthening of our effective working relationship with private landowners to promote voluntary, proactive conservation of the Salado salamander and its habitat as opposed to reactive regulation; (2) allowance for continued meaningful collaboration and cooperation in working toward species recovery, including conservation benefits that might not otherwise occur; and (3) encouragement of developing additional conservation easements and other conservation and management plans in the future for other federally listed and sensitive species.

Many landowners perceive critical habitat as an unfair and unnecessary regulatory burden. According to some, the designation of critical habitat on private lands significantly reduces the likelihood that landowners will support and carry out conservation actions (Main et al. 1999, p. 1,263; Bean 2002, p. 2). The magnitude of this negative outcome is greatly amplified in situations where active management measures (such as reintroduction, fire management, and control of invasive species) are necessary for species conservation (Bean 2002, pp. 3–4). We find that the judicious exclusion of specific areas of non-federally owned lands from critical habitat designations can contribute to species recovery and provide a superior level of conservation than critical habitat alone. We find that, where consistent with the discretion provided by the Act, it is necessary to implement policies that provide positive incentives to private landowners to voluntarily conserve natural resources and that remove or reduce disincentives to conservation

(Wilcove et al. 1996, pp. 1–15; Bean 2002, pp. 1–7).

Partnerships with non-Federal landowners are vital to the conservation of listed species, especially on non-Federal lands; therefore, the Service is committed to supporting and encouraging such partnerships through the recognition of positive conservation contributions. In the case considered here, excluding these areas from critical habitat will help foster the partnerships the landowners and land managers in question have developed with Federal and State agencies and local conservation organizations; will encourage the continued implementation of voluntary conservation actions for the benefit of the Salado salamander and its habitat on these lands; and may also serve as a model and aid in fostering future cooperative relationships with other parties here and in other locations for the benefit of other endangered or threatened species. We find that the judicious exclusion of specific areas of non-federally owned lands from critical habitat designation can contribute to species recovery and provide a superior level of conservation than critical habitat. Therefore, we consider the positive effect of excluding active conservation partners from critical habitat to be a significant benefit of exclusion.

Benefits of Exclusion Outweigh the Benefits of Inclusion—Solana Ranch Preserve: We evaluated the exclusion of 204 ha (84 ac) of private land within the boundaries of the 256 ac (104 ha) Solana Ranch under a perpetual conservation easement with The Nature Conservancy, from our designation of critical habitat, and we determined the benefits of excluding these lands outweigh the benefits of including them as critical habitat for the Salado salamander.

We conclude that the additional regulatory and educational benefits of including these lands as critical habitat are relatively small, because of the unlikelihood of a Federal nexus on these private lands. These benefits are further reduced by the existence of a 256-ac (104-ha) conservation easement on the Solana Ranch that contains 204 ha (84 ac) of proposed critical habitat. We anticipate that there will be little additional Federal regulatory benefit to the taxon on private land because there is a low likelihood that those parcels will be negatively affected to any significant degree by Federal activities requiring section 7 consultation, and ongoing management activities indicate there would be no additional requirements pursuant to a consultation that addresses critical habitat.

Furthermore, the potential educational and informational benefits of critical habitat designation on lands containing the physical or biological features essential to the conservation of the Salado salamander would be minimal, because the landowners and land managers under consideration have demonstrated their knowledge of the species and its habitat needs in the process of developing their partnerships with the Service. Additionally, the current active conservation efforts on some of these lands contribute to our knowledge of the species through monitoring and scientific research.

In contrast, the benefits derived from excluding these owners and enhancing our partnership with these landowners and land managers is significant. Because voluntary conservation efforts for the benefit of listed species on non-Federal lands are so valuable, the Service considers the maintenance and encouragement of conservation partnerships to be a significant benefit of exclusion. The development and maintenance of effective working partnerships with non-Federal landowners for the conservation of listed species is particularly important in areas such as Texas, a State with relatively little Federal landownership but many species of conservation concern. Excluding these areas from critical habitat will help foster the partnerships the landowners and land managers in question have developed with Federal and State agencies and local conservation organizations, and will encourage the continued implementation of voluntary conservation actions for the benefit of the Salado salamander and its habitat on these lands. In addition, these partnerships not only provide a benefit for the conservation of these species, but may also serve as a model and aid in fostering future cooperative relationships with other parties in this area of Texas and in other locations for the benefit of other endangered or threatened species.

We find that excluding areas from critical habitat that are receiving both long-term conservation and management for the purpose of protecting the habitat that supports the Salado salamander will preserve our partnership with the Solana Ranch owner and operator and will encourage future collaboration towards conservation and recovery of listed species. The partnership benefits are significant and outweigh the small potential regulatory, educational, and ancillary benefits of including the land in the final critical habitat designation for the Salado salamander. Therefore,

the Solana Ranch Preserve conservation easement provides greater protection of habitat for the Salado salamander than could be gained through the project-by-project analysis of a critical habitat designation.

Exclusion Will Not Result in Extinction of the Species—Solana Ranch Preserve: We determined that the exclusion of 204 ha (84 ac) of land within the boundaries of the Solana Ranch Preserve conservation easement held by The Nature Conservancy in perpetuity will not result in extinction of the taxon. Protections afforded the taxon and its habitat by the conservation easement provide assurances that the taxon will not go extinct as a result of excluding these lands from the critical habitat designation.

An important consideration as we evaluate these exclusions and their potential effect on the species in question is that critical habitat does not carry with it a regulatory requirement to restore or actively manage habitat for the benefit of listed species; the regulatory effect of critical habitat is only the avoidance of destruction or adverse modification of critical habitat should an action with a Federal nexus occur. It is, therefore, advantageous for the conservation of the species to support the proactive efforts of non-Federal landowners who are contributing to the enhancement of essential habitat features for listed species through exclusion. The jeopardy standard of section 7 of the Act will also provide protection in these occupied areas when there is a Federal nexus. Therefore, based on the above discussion, the Secretary is exercising her discretion to exclude 204 ha (84 ac) of land from the designation of critical habitat for the Salado salamander.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order (E.O.) 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public

where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine whether potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term “significant economic impact” is meant to apply to a typical small business firm’s business operations.

Under the RFA, as amended, and as understood in light of recent court

decisions, Federal agencies are required to evaluate only the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated by this designation. The RFA does not require evaluation of the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities will be directly regulated by this rulemaking, the Service certifies that this critical habitat designation will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. We do not find that this critical habitat designation will significantly affect energy supplies, distribution, or use, as the areas identified as critical habitat are along riparian corridors in mostly remote areas with little energy supplies, distribution, or infrastructure in place. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both “Federal

intergovernmental mandates” and “Federal private sector mandates.” These terms are defined in 2 U.S.C. 658(5)–(7). “Federal intergovernmental mandate” includes a regulation that “would impose an enforceable duty upon State, local, or Tribal governments” with two exceptions. It excludes “a condition of Federal assistance.” It also excludes “a duty arising from participation in a voluntary Federal program,” unless the regulation “relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,” if the provision would “increase the stringency of conditions of assistance” or “place caps upon, or otherwise decrease, the Federal Government’s responsibility to provide funding,” and the State, local, or Tribal governments “lack authority” to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. “Federal private sector mandate” includes a regulation that “would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.”

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We have determined that this rule will not significantly or uniquely affect

small governments because it will not produce a Federal mandate of \$100 million or greater in any year; that is, it is not a “significant regulatory action” under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. By definition, Federal agencies are not considered small entities, although the activities they fund or permit may be proposed or carried out by small entities. Consequently, we have determined that this critical habitat designation will not significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the Georgetown and Salado salamanders in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed and concludes that this designation of critical habitat for the Georgetown and Salado salamanders does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of the critical habitat designation with, the appropriate State resource agencies. We

did not receive comments from the State. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the rule does not have substantial direct effects either on the State, or on the relationship between the Federal Government and the State, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning because these local governments no longer have to wait for case-by-case section 7 consultations to occur.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) will be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this rule identifies the physical or biological features essential to the conservation of the species. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President’s memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior’s manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have identified no Tribal interests that will be affected by this rule.

References Cited

A complete list of references cited in this rulemaking is available on the internet at <http://www.regulations.gov> and upon request from the Austin

Ecological Services Field Office (see FOR FURTHER INFORMATION CONTACT).

Authors

The primary authors of this rule are the staff members of the Service's Austin Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11 in paragraph (h) by revising the entries for “Salamander, Georgetown” and “Salamander, Salado” in the List of Endangered and Threatened Wildlife under “AMPHIBIANS” to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *
(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
* AMPHIBIANS	*	*	*	*
* Salamander, Georgetown.	* <i>Eurycea naufragia</i>	* Wherever found	* T	* 79 FR 10236, 2/24/2014; 50 CFR 17.43(e); 4 ^d 50 CFR 17.95(d). ^{CH}
* Salamander, Salado	* <i>Eurycea chisholmensis</i>	* Wherever found	* T	* 79 FR 10236, 2/24/2014; 50 CFR 17.95(d). ^{CH}
*	*	*	*	*

■ 3. Amend § 17.95 in paragraph (d) by adding entries for “Georgetown Salamander (*Eurycea naufragia*)” and “Salado Salamander (*Eurycea chisholmensis*)” in the same order that these species appear in the table at § 17.11(h) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *
(d) * * *

Georgetown Salamander (*Eurycea naufragia*)

(1) Critical habitat units are depicted for Williamson County, Texas, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of Georgetown salamander consist of the following components:

(i) For surface habitat:

(A) *Water from the Northern Segment of the Edwards Aquifer.* Groundwater issuing to the surface from the underlying aquifer is similar to natural aquifer conditions as it discharges from natural spring outlets. Concentrations of water quality constituents and contaminants should be below levels that could exert direct lethal or sublethal effects (such as effects to reproduction, growth, development, or metabolic processes), or indirect effects (such as effects to the Georgetown salamander's prey base). Hydrologic regimes similar to the historical pattern of the specific sites are present, with at

least some surface flow during the year. The water chemistry of aquatic surface habitats is similar to natural aquifer conditions, with temperatures from 61 to 84 °F (16 to 29 °C), dissolved oxygen concentrations from 5 to 13 milligrams per liter (mg/L), and specific water conductance from 317 to 814 micro-Siemens per centimeter (µS/cm).

(B) *Rocky substrate with interstitial spaces.* Rocks in the substrate of the salamander's surface aquatic habitat are large enough to provide salamanders with cover, shelter, and foraging habitat. The substrate and interstitial spaces have minimal sedimentation.

(C) *Aquatic invertebrates for food.* The spring environment supports a diverse aquatic invertebrate community that includes crustaceans, insects, and aquatic snails.

(D) *Subterranean aquifer.* Access to the subsurface water table exists to provide shelter, protection, and space for reproduction. This access can occur in the form of large conduits that carry water to the spring outlet or porous voids between rocks in the streambed that extend down into the water table.

(ii) For subsurface habitat:

(A) *Water from the Northern Segment of the Edwards Aquifer.* Groundwater quality is similar to natural aquifer conditions. Concentrations of water quality constituents and contaminants should be below levels that could exert direct lethal or sublethal effects (such as effects to reproduction, growth,

development, or metabolic processes), or indirect effects (such as effects to the Georgetown salamander's prey base). Hydrologic regimes similar to the historical pattern of the specific sites are present, with continuous flow. The water chemistry is similar to natural aquifer conditions, with temperatures from 61 to 84 °F (16 to 29 °C), dissolved oxygen concentrations from 5 to 13 mg/L, and specific water conductance from 317 to 814 µS/cm.

(B) *Subsurface spaces.* Voids between rocks underground are large enough to provide salamanders with cover, shelter, and foraging habitat. These spaces have minimal sedimentation.

(C) *Aquatic invertebrates for food.* The habitat supports an aquatic invertebrate community that includes crustaceans, insects, and aquatic snails.

(3) Surface critical habitat includes the spring outlets and outflow up to the high-water line and 262 feet (ft) (80 meters (m)) of upstream and downstream habitat, including the dry stream channel during periods of no surface flow. The surface critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) existing within the legal boundaries on September 17, 2021; however, the subsurface critical habitat may extend below such structures. The subsurface critical habitat includes underground features in a circle with a radius of 984 ft (300 m) around the springs.

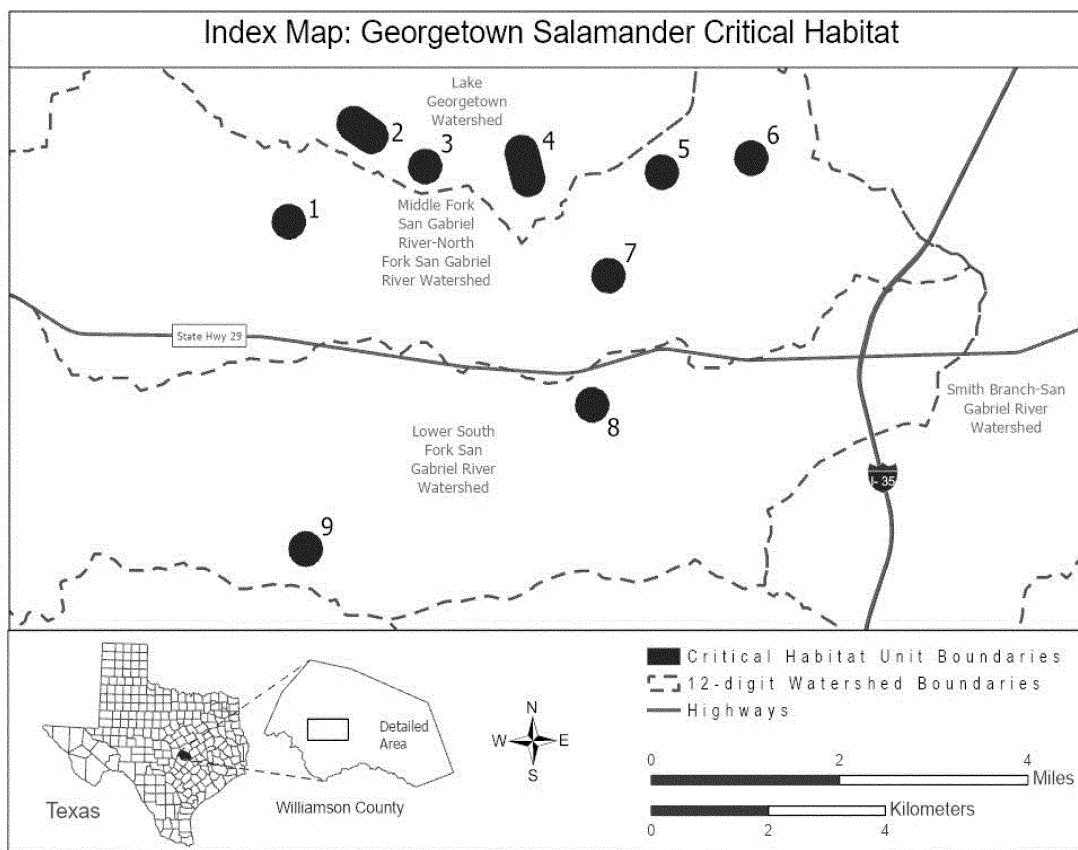
(4) Data layers defining map units were created using a geographic information system (GIS), which included species locations, roads, property boundaries, 2011 aerial photography, and U.S. Geological Survey 7.5' quadrangles. Points were placed on the GIS. We delineated critical habitat unit boundaries by starting with the cave or spring point locations that are occupied by the salamander. From these cave or springs points, we delineated a 984-ft (300-m) buffer to create the polygons that capture the extent to which we estimate

the salamander populations exist through underground conduits. The polygons were then simplified to reduce the number of vertices, but still retain the overall shape and extent. Subsequently, polygons that were within 98 ft (30 m) of each other were merged together. Each new merged polygon was then revised to remove extraneous divots or protrusions that resulted from the merge process. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot

points or both on which each map is based are available to the public at the Service's internet site at <http://www.fws.gov/southwest/es/AustinTexas/>, at <http://www.regulations.gov> at Docket No. FWS-R2-ES-2020-0048, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Note: Index map follows:

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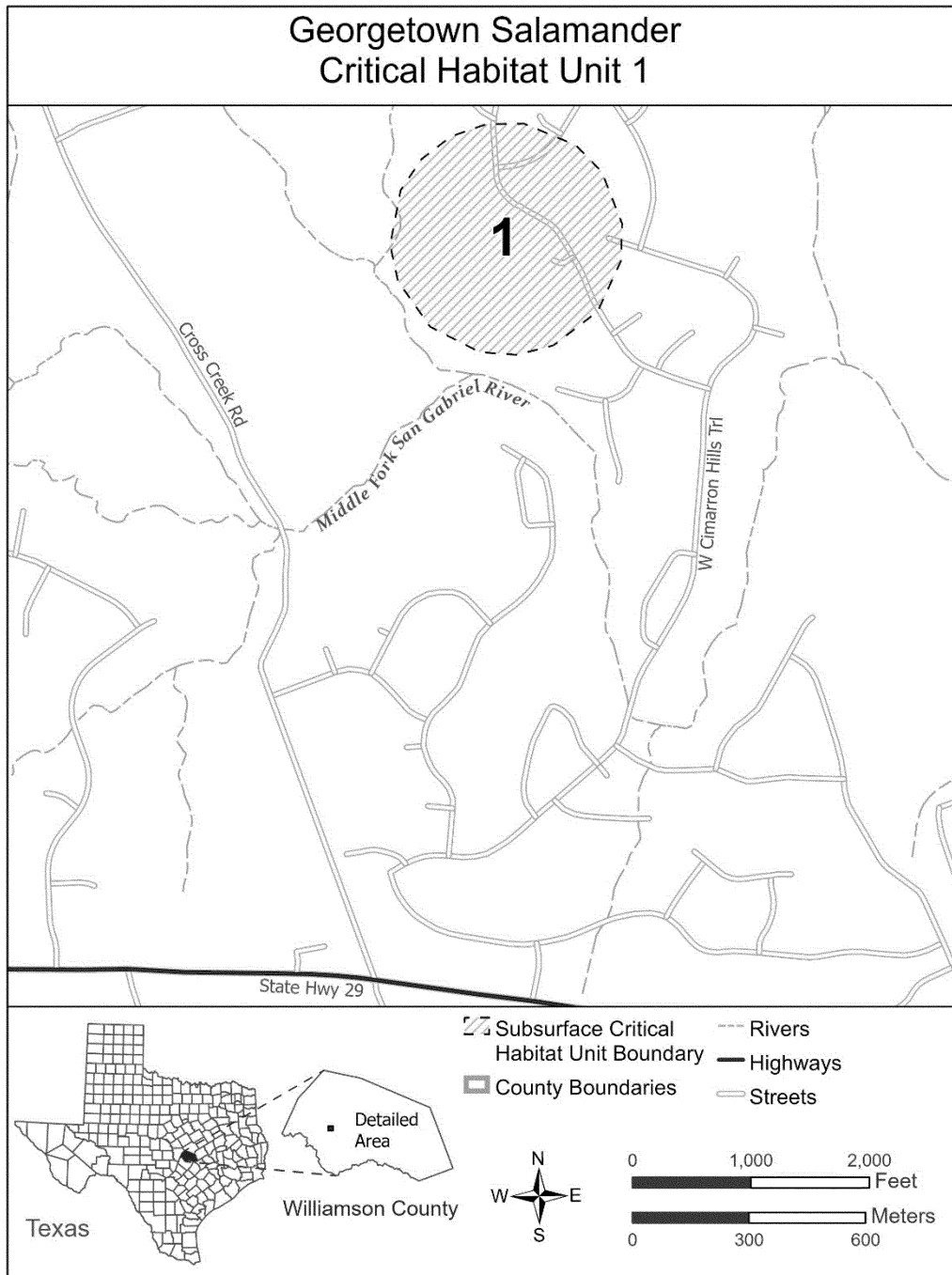
(6) Unit 1: Water Tank Cave Unit, Williamson County, Texas.

(i) Unit 1 consists of 68 ac (28 ha) of private land in west-central Williamson County. A golf course crosses the unit

from northwest to southeast, and there are several roads in the eastern part of the unit. A secondary road crosses the extreme southern portion of the unit,

and there are residences in the northwestern, southwestern, and west-central portions of the unit.

(ii) Map of Unit 1 follows:



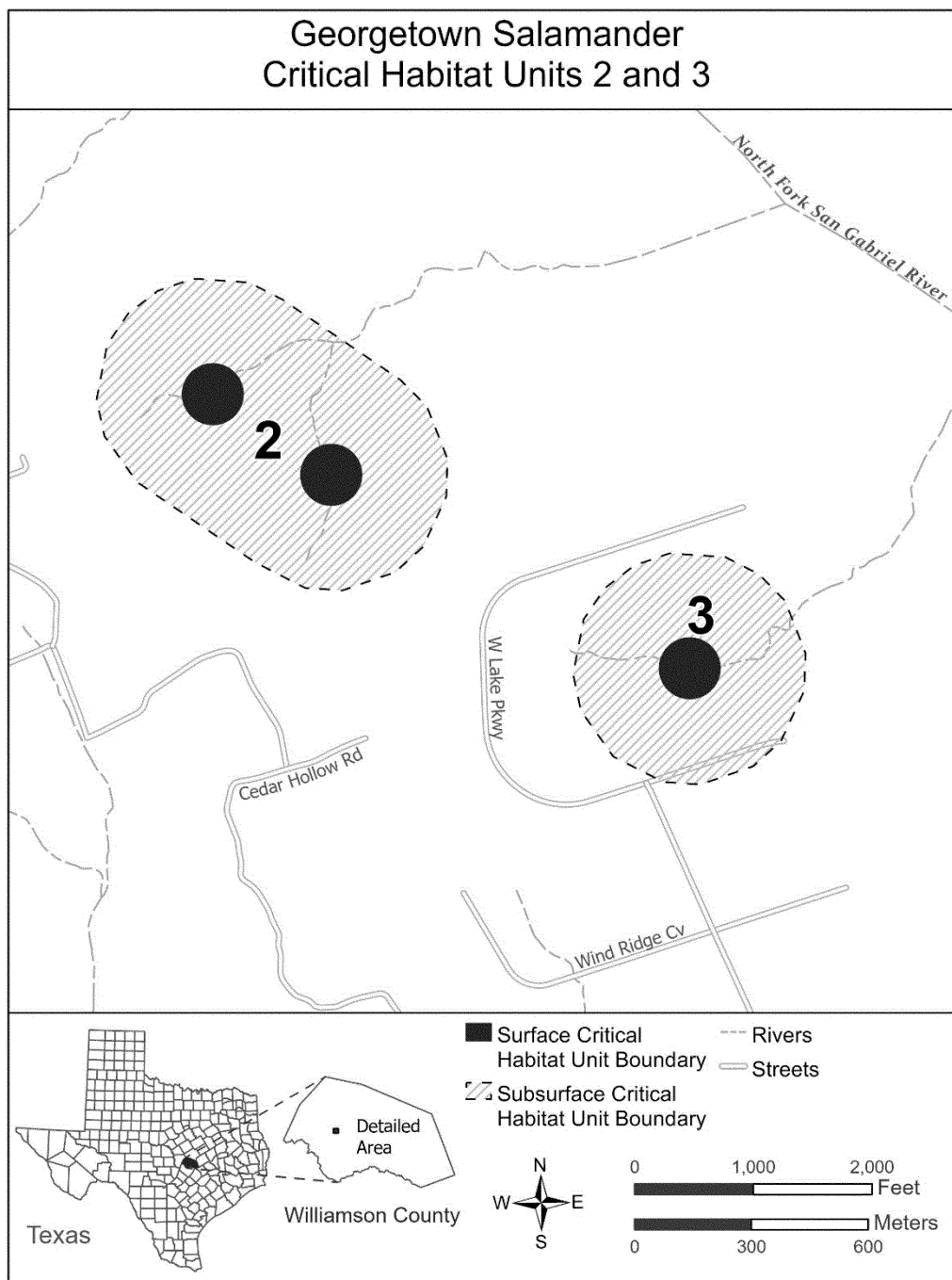
(7) Unit 2: Hogg Hollow Spring Unit, Williamson County, Texas.

(i) Unit 2 consists of approximately 122 ac (49 ha) of U.S. Army Corps of

Engineers land and private land in Williamson County, Texas. The unit is located south of Lake Georgetown and is mostly undeveloped. The northwestern

part of the unit includes Sawyer Park, part of the Lake Georgetown recreation area.

(ii) Map of Units 2 and 3 follows:



(8) Unit 3: Cedar Hollow Spring Unit, Williamson County, Texas.

(i) Unit 3 consists of approximately 68 ac (28 ha) of private land in west-central Williamson County, Texas. A secondary road crosses the extreme southern portion of the unit, and there are residences in the northwestern, southwestern, and west-central portions of the unit.

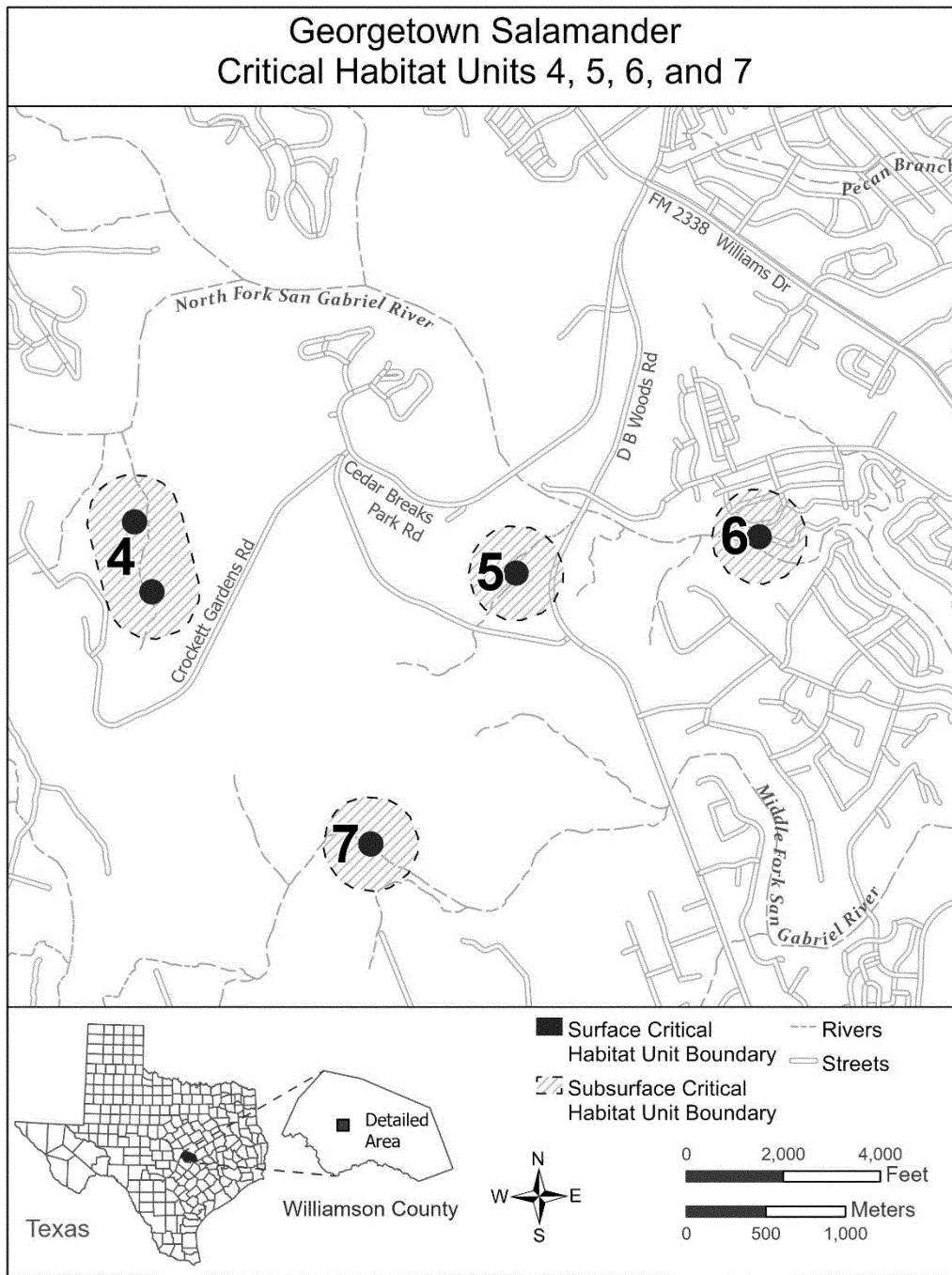
(ii) Map of Unit 3 is provided at paragraph (7)(ii) of this entry.

(9) Unit 4: Lake Georgetown Unit, Williamson County, Texas.

(i) Unit 4 consists of approximately 134 ac (54 ha) of Federal and private land in west-central Williamson County, Texas. Part of the unit is the U.S. Army Corps of Engineers' Lake Georgetown property. There are currently no plans to develop the property. There is some control of public access. Unpaved roads are found in the western portion of the unit, and a trail begins in the central

part of the unit and leaves the northeast corner. A secondary road crosses the extreme southern portion of the unit, and there are residences in the northwestern, southwestern, and west-central portions of the unit. A large quarry is located a short distance southeast of the unit.

(ii) Map of Units 4, 5, 6, and 7 follows:



(10) Unit 5: Buford Hollow Spring Unit, Williamson County, Texas.

(i) Unit 5 consists of approximately 68 ac (28 ha) of Federal and private land in west-central Williamson County, Texas. The unit is located just below the spillway for Lake Georgetown. The U.S. Army Corps of Engineers owns most of this unit as part of Lake Georgetown. The D.B. Wood Road, a major thoroughfare, crosses the eastern part of the unit.

(ii) Map of Unit 5 is provided at paragraph (9)(ii) of this entry.

(11) Unit 6: Swinbank Spring Unit, Williamson County, Texas.

(i) Unit 6 consists of approximately 68 ac (28 ha) of City and private land in west-central Williamson County, Texas. The unit is located near River Road south of Melanie Lane. The northern part of the unit is primarily in residential development, while the southern part of this unit is primarily undeveloped.

(ii) Map of Unit 6 is provided at paragraph (9)(ii) of this entry.

(12) Unit 7: Avant Spring Unit, Williamson County, Texas.

(i) Unit 7 consists of approximately 68 ac (28 ha) of private land in west-central Williamson County, Texas. The northern part of a large quarry is along the southwestern edge of the unit. The rest of the unit is undeveloped.

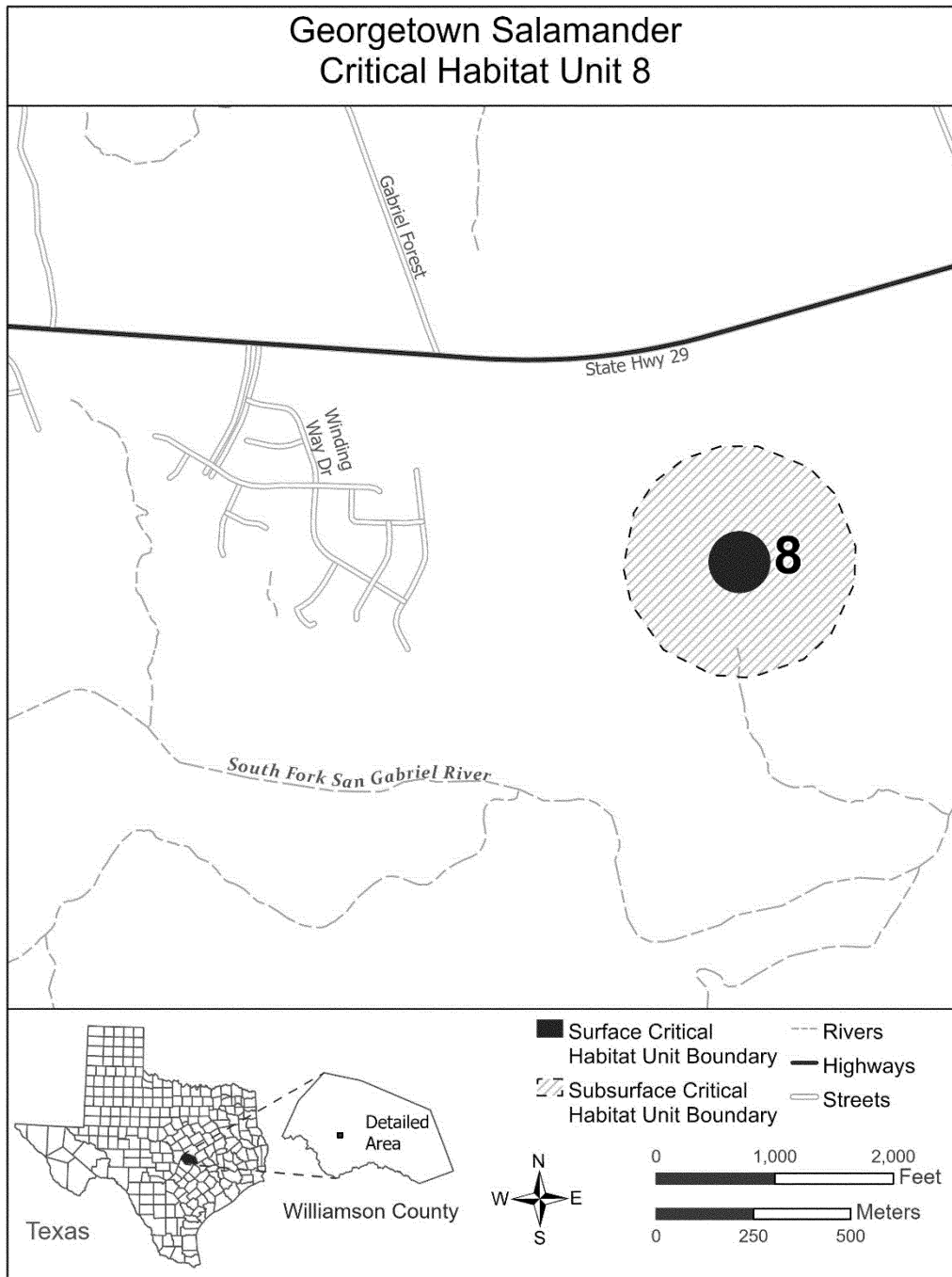
(ii) Map of Unit 7 is provided at paragraph (9)(ii) of this entry.

(13) Unit 8: Shadow Canyon Spring Unit, Williamson County, Texas.

(i) Unit 8 consists of approximately 68 ac (28 ha) of City and private land in west-central Williamson County, Texas. The unit is located just south of State Highway 29. This unit contains Shadow

Canyon Spring, which is occupied by the Georgetown salamander.

(ii) Map of Unit 8 follows:



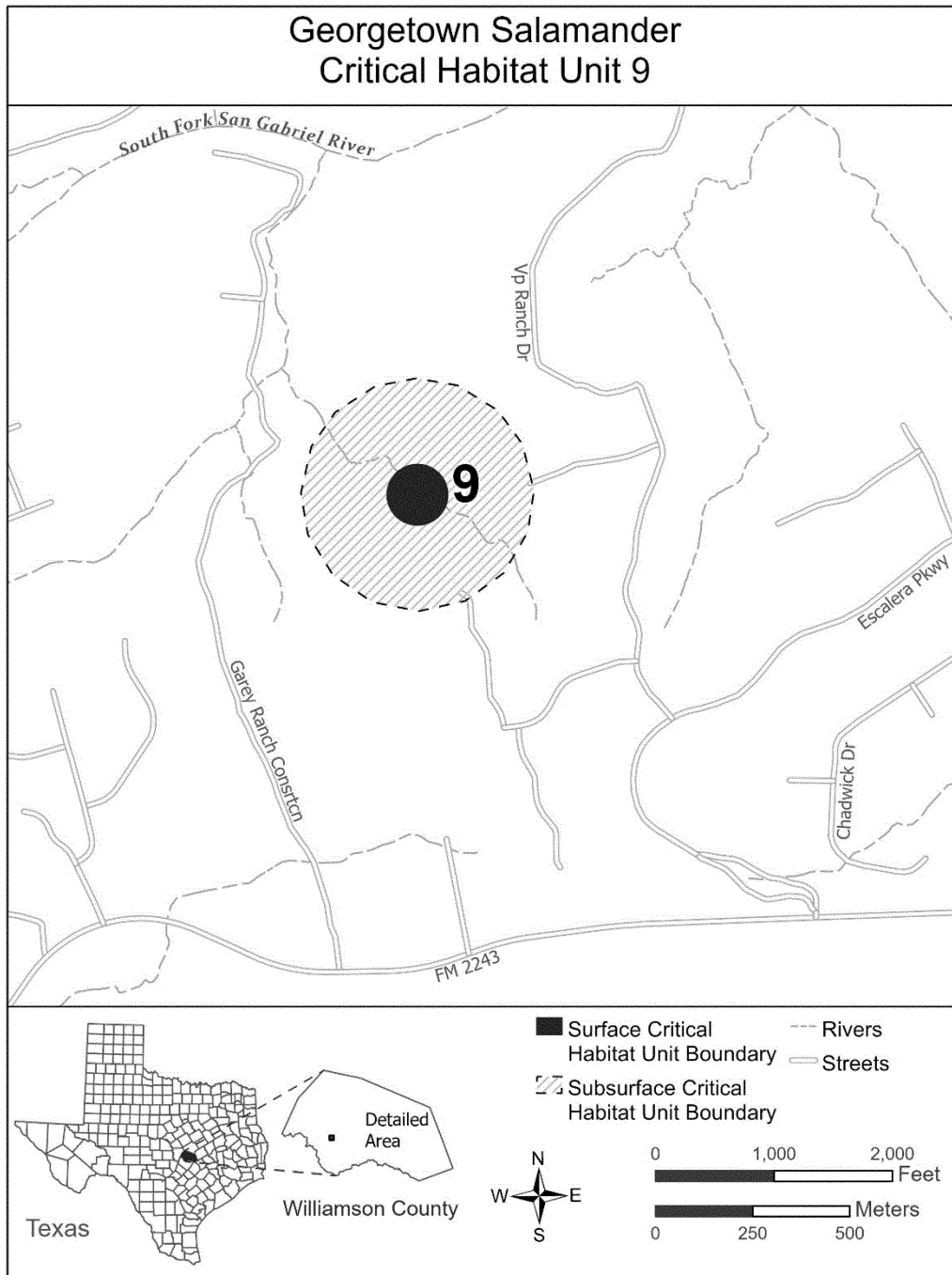
(14) Unit 9: Garey Ranch Spring Unit, Williamson County, Texas.

(i) Unit 9 consists of approximately 68 ac (28 ha) of private land in Williamson

County, Texas. The unit is located north of RM 2243. The unit is mostly undeveloped. A small amount of

residential development enters the southern and eastern parts of the unit.

(ii) Map of Unit 9 follows:



* * * * *

Salado Salamander (*Eurycea chisholmensis*)

(1) Critical habitat units are depicted for Bell and Williamson Counties, Texas, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of Salado salamander consist of the following components:

(i) For surface habitat:

(A) *Water from the Northern Segment of the Edwards Aquifer.* Groundwater quality issuing to the surface from the

underlying aquifer is similar to natural aquifer conditions as it discharges from natural spring outlets. Concentrations of water quality constituents and contaminants are below levels that could exert direct lethal or sublethal effects (such as effects to reproduction, growth, development, or metabolic processes), or indirect effects (such as effects to the Salado salamander's prey base). Hydrologic regimes similar to the historical pattern of the specific sites are present, with at least some surface flow during the year. The water chemistry of aquatic surface habitats is similar to

natural aquifer conditions, with temperatures from 61 to 84 °F (16 to 29 °C), dissolved oxygen concentrations from 5 to 13 milligrams per liter (mg/L), and specific water conductance from 317 to 814 micro-Siemens per centimeter (µS/cm).

(B) *Rocky substrate with interstitial spaces.* Rocks in the substrate of the salamander's surface aquatic habitat are large enough to provide salamanders with cover, shelter, and foraging habitat. The substrate and interstitial spaces have minimal sedimentation.

(C) *Aquatic invertebrates for food*. The spring environment is capable of supporting a diverse aquatic invertebrate community that includes crustaceans, insects, and aquatic snails.

(D) *Subterranean aquifer*. Access to the subsurface water table exists to provide shelter, protection, and space for reproduction. This access can occur in the form of large conduits that carry water to the spring outlet or porous voids between rocks in the streambed that extend down into the water table.

(ii) For subsurface habitat:

(A) *Water from the Northern Segment of the Edwards Aquifer*. Groundwater quality is similar to natural aquifer conditions. Concentrations of water quality constituents and contaminants are below levels that could exert direct lethal or sublethal effects (such as effects to reproduction, growth, development, or metabolic processes), or indirect effects (such as effects to the Salado salamander's prey base). Hydrologic regimes similar to the historical pattern of the specific sites are present, with continuous flow. The water chemistry is similar to natural aquifer conditions, with temperatures from 61 to 84 °F (16 to 29 °C), dissolved oxygen concentrations from 5 to 13 mg/L, and specific water conductance from 317 to 814 µS/cm.

(B) *Subsurface spaces*. Voids between rocks underground are large enough to

provide salamanders with cover, shelter, and foraging habitat. These spaces have minimal sedimentation.

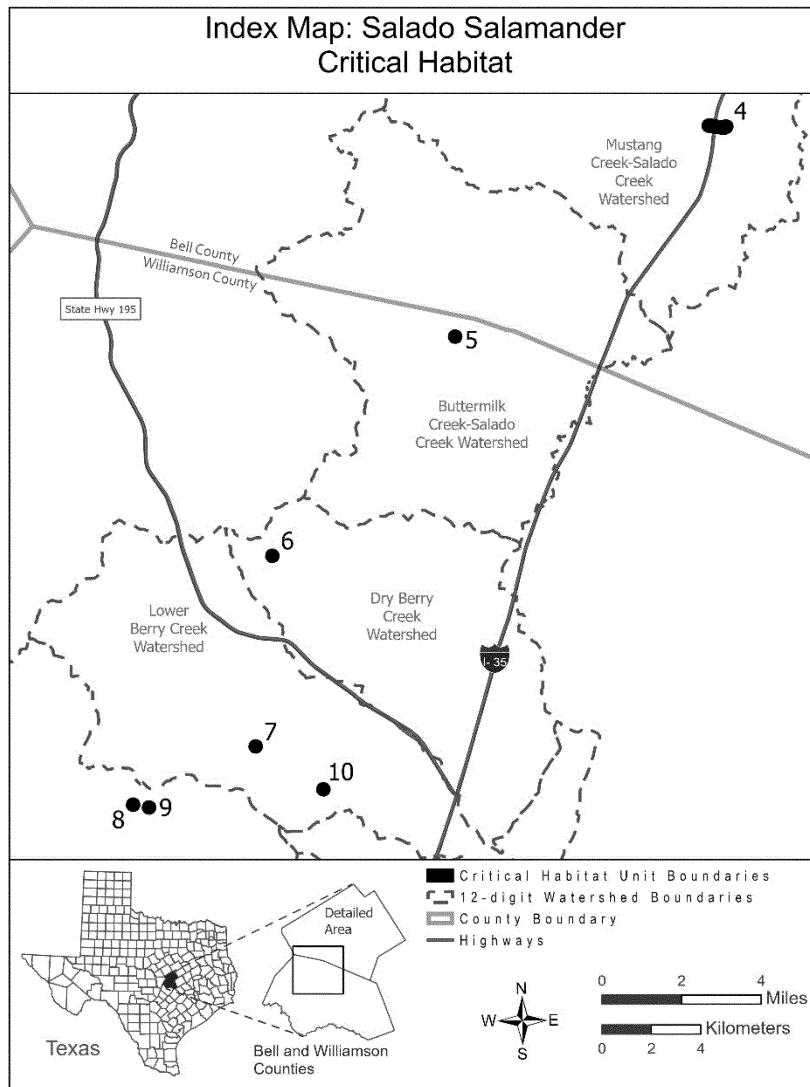
(C) *Aquatic invertebrates for food*. The habitat is capable of supporting an aquatic invertebrate community that includes crustaceans, insects, and aquatic snails.

(3) Surface critical habitat includes the spring outlets and outflow up to the high-water line and 262 ft (80 m) of upstream and downstream habitat, including the dry stream channel during periods of no surface flow. The surface critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) existing within the legal boundaries on September 17, 2021; however, the subsurface critical habitat may extend below such structures. The subsurface critical habitat includes underground features in a circle with a radius of 984 ft (300 m) around the springs.

(4) Data layers defining map units were created using a geographic information system (GIS), which included species locations, roads, property boundaries, 2011 aerial photography, and U.S. Geological Survey 7.5' quadrangles. Points were placed on the GIS. We delineated critical habitat unit boundaries by starting with the cave or spring point

locations that are occupied by the salamanders. From these cave or springs points, we delineated a 984-ft (300-m) buffer to create the polygons that capture the extent to which we estimate the salamander populations exist through underground conduits. The polygons were then simplified to reduce the number of vertices, but still retain the overall shape and extent. Subsequently, polygons that were within 98 ft (30 m) of each other were merged together. Each new merged polygon was then revised to remove extraneous divots or protrusions that resulted from the merge process. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site at <http://www.fws.gov/southwest/es/AustinTexas/>, at <http://www.regulations.gov> at Docket No. FWS-R2-ES-2020-0048, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Note: Index map follows:



(6) Unit 4: IH-35 Unit.

(i) Unit 4 consists of approximately 175 ac (71 ha) of private, State, and City of Salado land located in southwestern Bell County, Texas, in the southern part of the Village of Salado. The unit

extends along Salado Creek on both sides of Interstate Highway 35 (IH 35). The IH 35 right-of-way crosses Salado Creek and is owned by the Texas Department of Transportation. The unit

is a mixture of residential and commercial properties on its eastern portion, with some undeveloped ranch land in the western part west of IH-35.

(ii) Map of Unit 4 follows:

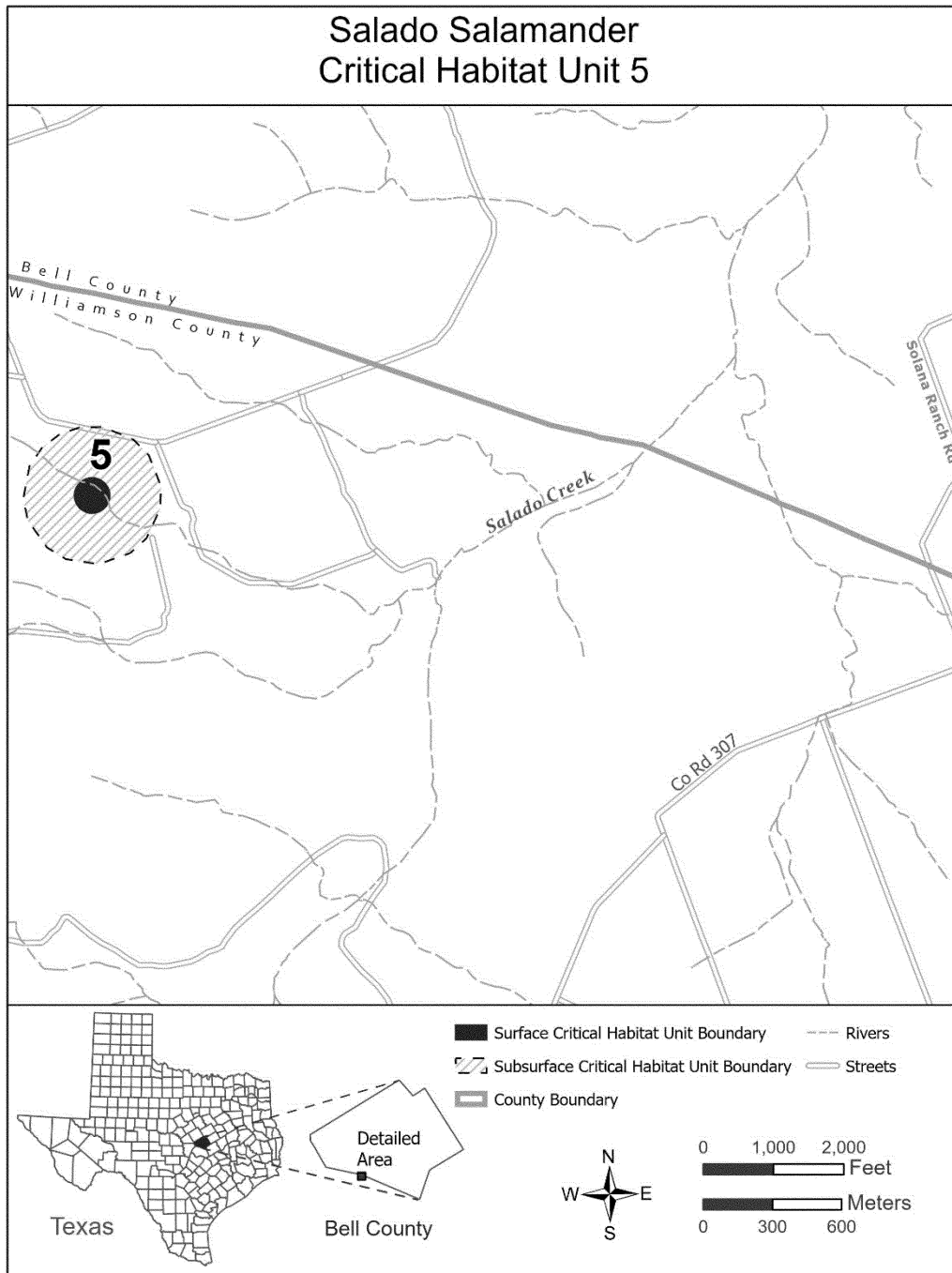


(7) Unit 5: King's Garden Main Spring Unit.

(i) Unit 5 consists of approximately 68 ac (28 ha) of private land in northern

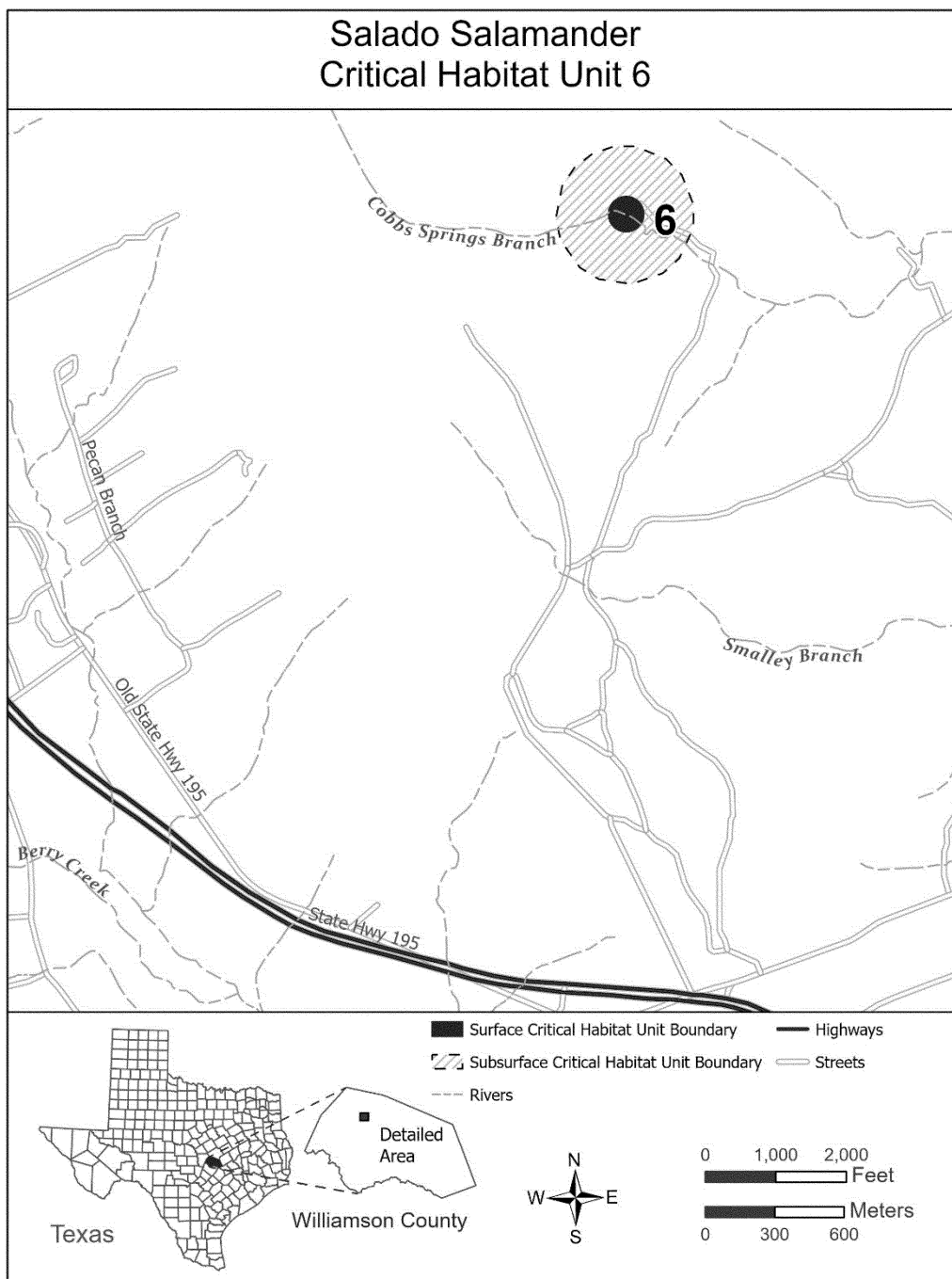
Williamson County, Texas. The unit is undeveloped land.

(ii) Map of Unit 5 follows:



(8) Unit 6: Cobbs Spring Unit.
 (i) Unit 6 consists of approximately 68 ac (28 ha) of private land located in

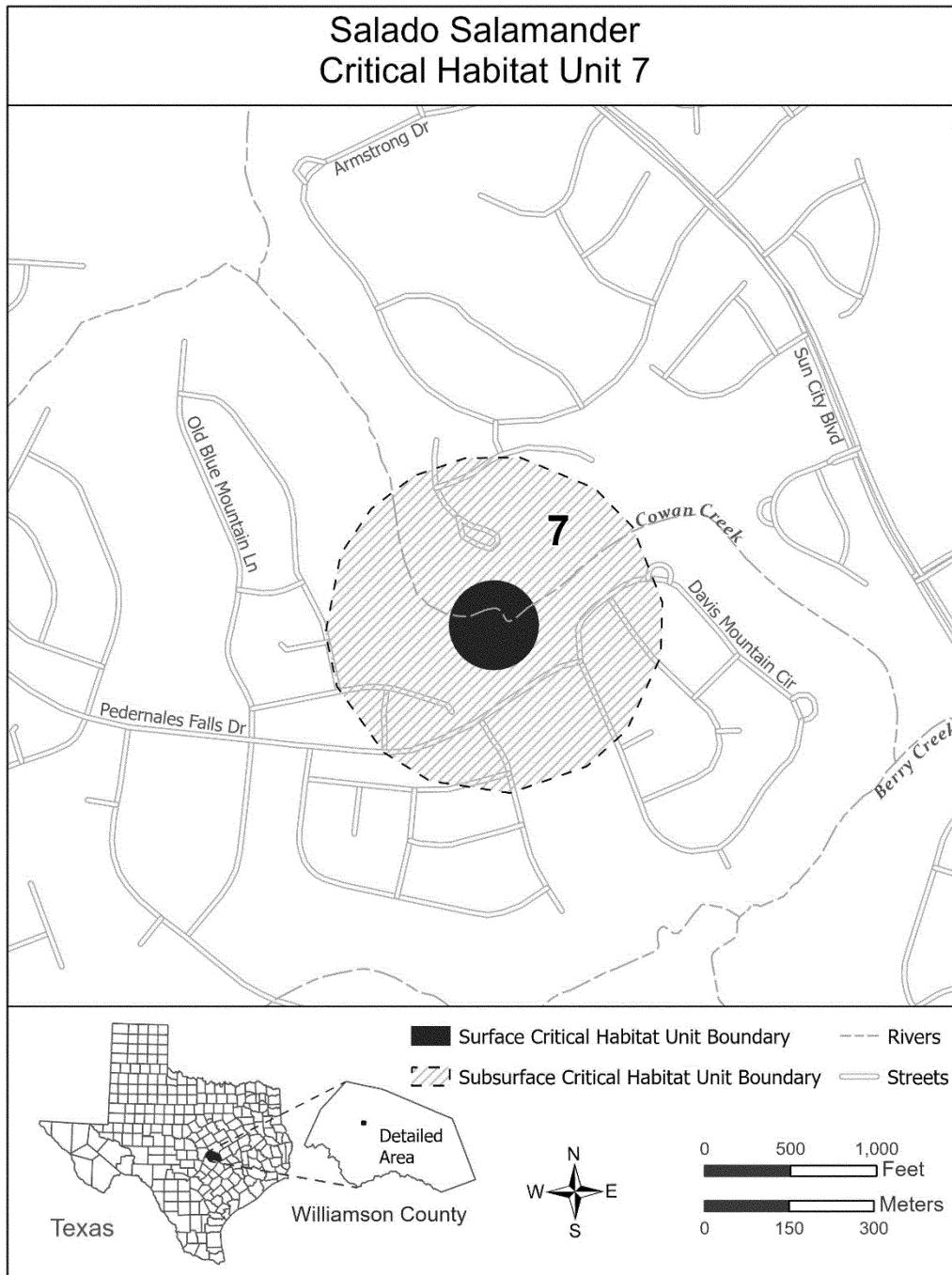
northwestern Williamson County, Texas. The unit is undeveloped land.
 (ii) Map of Unit 6 follows:



(9) Unit 7: Cowan Creek Spring Unit.
(i) Unit 7 consists of approximately 68 ac (28 ha) of private land located in

west-central Williamson County, Texas. The northern portion of the unit is

residential development; the remainder is undeveloped.
(ii) Map of Unit 7 follows:



(10) Unit 8: Walnut Spring Unit.
 (i) Unit 8 consists of approximately 68 ac (28 ha) of private and Williamson County land located in west-central Williamson County, Texas. The western,

eastern, and northeastern portions of the unit contain low-density residential development; the southern and north-central portions are undeveloped. The extreme southeastern corner of the unit

is part of Williamson County Conservation Foundation's Twin Springs Preserve.

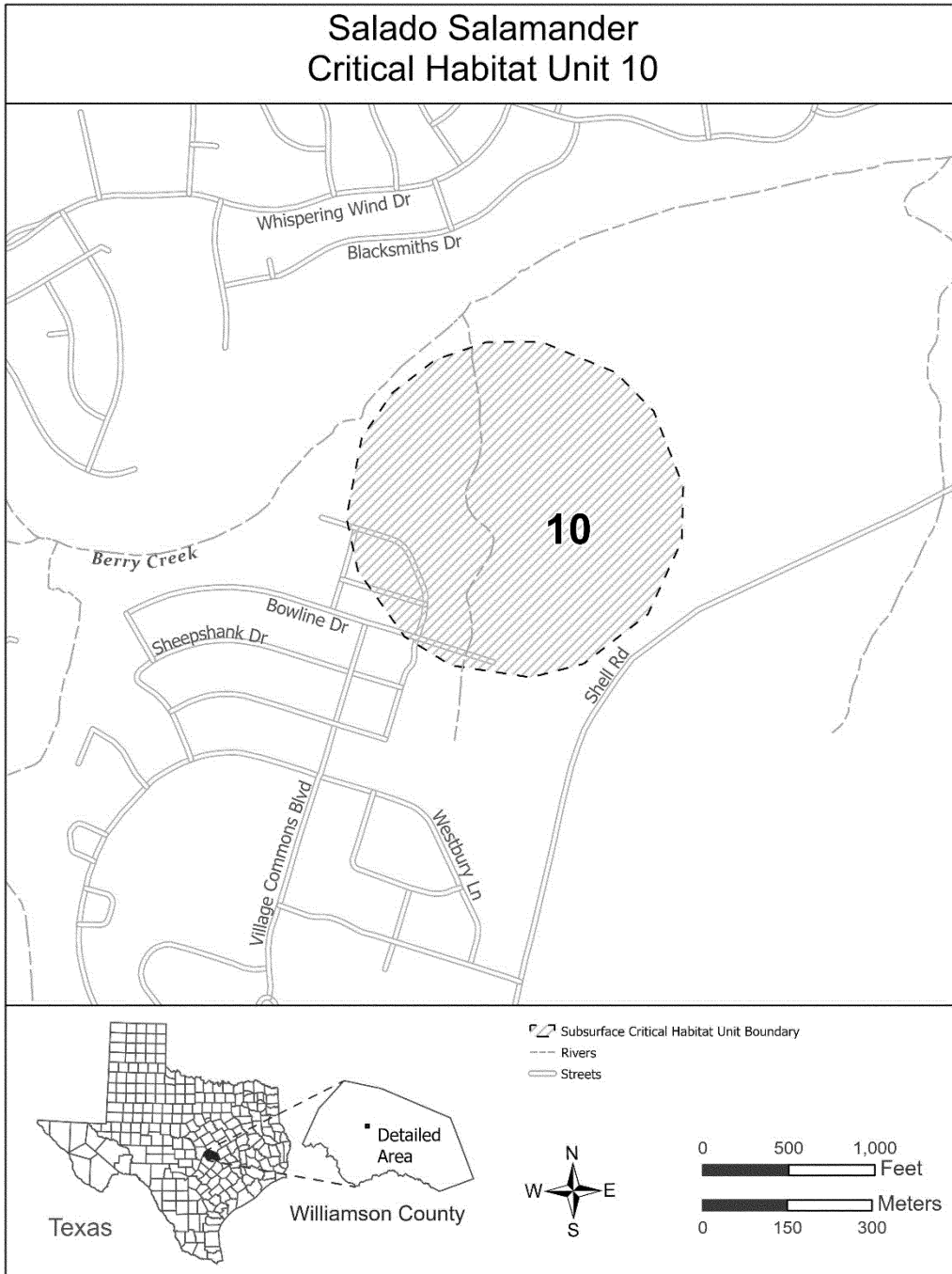
(ii) Map of Units 8 and 9 follows:



(11) Unit 9: Twin Springs Unit.
 (i) Unit 9 consists of approximately 68 ac (28 ha) of private and Williamson County land located in west-central Williamson County, Texas. The northern portion of the unit contains low-density residential development;

the remainder of the unit is undeveloped. The majority of the unit is part of Williamson County Conservation Foundation's Twin Springs Preserve.
 (ii) Map of Unit 9 is provided at paragraph (10)(ii) of this entry.
 (12) Unit 10: Bat Well Cave Unit.

(i) Unit 10 consists of approximately 68 ac (28 ha) of private land located in west-central Williamson County, Texas. The western, northern, and southern portion of the unit contains residential development.
 (ii) Map of Unit 10 follows:



* * * * *

Martha Williams,
*Principal Deputy Director, Exercising the
Delegated Authority of the Director, U.S. Fish
and Wildlife Service.*

[FR Doc. 2021-17600 Filed 8-17-21; 8:45 am]

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